

## **LOCAL GOVERNMENT NOTICE**

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## **MUNICIPALITY OF NKONKOBÉ**

### **BY-LAW RELATING TO THE PREVENTION OF NUISANCES**

The Municipal Manager hereby publishes, in terms of Section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000], read with Section 162 of the Constitution of the Republic of South Africa Act [Act No. 108 of 1996], the By-law Relating to the Prevention of Nuisances.

#### **Purpose of By-law**

The purpose of this by-law is to promote a safe, healthy and peaceful environment for the benefit of the public residing within the municipal boundaries, and to provide for practices and procedures to regulate the prevention of nuisances.

#### **CHAPTER 1**

#### **DEFINITIONS**

1. **Definitions** - In this by-law, words used in the masculine gender include the feminine, the singular includes the plural and vice versa, and, unless the context otherwise indicates -

'**area**' means the geographical area falling within the municipal boundaries of the Amahlathi Local Municipality;

'**authorised official**' means –

- (a) an official of the Municipality who has been authorised by it to administer, implement and enforce the provisions of this by-law;
- (b) a traffic officer appointed in terms of Section 3A of the National Road Traffic Act, 1996 [Act No. 93 of 1996];
- (c) a member of the police service, as defined in terms of Section 1 of the South African Police Service Act, 1995 [Act No. 68 of 1995]; or
- (d) a peace officer, contemplated in terms of Section 334 of the Criminal Procedure Act, 1977 [Act No. 51 of 1977];

'**municipality**' means the Municipality of Nkonkobe, established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 [Act No. 117 of 1998], and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in

connection with this by-law by virtue of a power vested in the municipality and delegated to such political structure, political office bearer, councillor, agent or employee;

**'nuisance'** means, without limiting the generality of the term, an act, omission, condition or state of affairs that –

- (a) impedes, offends, endangers or inconveniences the public at large;  
or
- (b) causes material inconvenience in the ordinary and comfortable use or enjoyment of private property;

**'occupier'** means and includes any person in actual occupation of any land or private property or having the charge or management thereof, without regard to the title under which he or she occupies it, and, in the case of private property subdivided and let to various lodgers or tenants, the person receiving the rent payable by lodgers or tenants, whether on his or her own account or as agent for any person entitled thereto or interested therein;

**'owner'**, in relation to any private property means -

- (a) the person in whose name the title to that private property is registered in terms of the Deeds Registries Act, 1937 [Act No. 47 of 1937], as amended, and includes the holder of the stand licence;
- (b) the person in whose name the certificate of sectional title to that private property is registered in terms of the Sectional Titles Act, 1986 [Act No. 95 of 1986], and, in addition, includes the owner (as defined in the said Act), the body corporate and the developer in relation to such private property;
- (c) if such person or holder is dead, insolvent, mentally disordered or defective, a minor, or under any legal disability, the person in whom the administration of that person's or holder's estate is vested, whether as executor, trustee, liquidator, guardian or in any other capacity whatsoever;
- (d) if the private property is under lease, the registration whereof being necessary for the validity of such lease, the lessee; or
- (e) where an owner, as herein defined, is absent from the Republic or his whereabouts are unknown, an agent of such owner, or any person receiving or entitled to receive rent in respect of the private property or any 'unit', as defined in the Sectional Titles Act, 1986, of such private property;

**'private property'** shall include any public place and any land privately owned, all buildings, rooms, tenements, sheds, huts or other structures or erections, and also yards or lands in connection therewith, and shall also include any "unit", as defined in the Sectional Titles Act, 1986, thereof;

**'public facility'** means an amenity provided by the municipality for the utilisation by and convenience of the public at large;

**'public place'** means any public street or place, including a beach and any navigable river, to which the public usually has access, but excludes any outdoor facility or municipal building;

**'public vehicle'** shall include any motor car, cab, taxi, rickshaw, bus or other vehicle hired or let for the conveyance of passengers;

**'refuse'**, without limiting the ordinary meaning of the word, means any unused vehicle or machinery or part thereof, or any scrap metal, builder's rubble, garden refuse, debris, garbage, tyres or any other discarded or abandoned article or object;

**'vehicle'** means any conveyance which is capable of transporting one or more persons, except a wheelchair or similar device used for the conveyance of a physically impaired person.

## CHAPTER 2

### PUBLIC PLACES

#### 2. Breaches of the peace

A person commits an offence if, in a public place, he or she -

- (a) accosts, insults, interferes with, jostles, threatens or harasses another person;
- (b) associates or acts in concert with other persons in a manner which causes or is likely to cause a breach of the peace; or
- (c) fights or incites or invites another person to fight.

#### 3. Indecent behaviour

(1) A person commits an offence if, in a public place, he or she -

- (a) is not decently clothed so that at least such person's genitalia are covered from view; or
- (b) performs any indecent act, or incites any other person to commit any such offence.

(2) A person commits an offence if, in a public place, he or she -

- (a) defecates or urinates, except within a public facility provided by or on behalf of the municipality for that purpose;
- (b) enters a toilet reserved or set aside for members of the opposite sex;
- (c) spits;
- (d) is under the influence of intoxicating liquor or imbibes or ingests such liquor in circumstances which, in the reasonable opinion of an authorised official, render it likely that such person will cause a nuisance to other persons;
- (e) is under the influence of a dependence-producing substance, as defined in the Drugs and Drug Trafficking Act, 1992 [Act No. 140 of 1992], or administers such a substance to him- or herself or another person; or
- (f) commits or displays any indecent gesture, or indecently exposes him- or herself.

#### 4. **Obscene or offensive language**

A person commits an offence if, in a public place within the hearing of a person in a public place, he or she uses any indecent or offensive language or sings an indecent or offensive song.

#### 5. **Indecent or offensive literature and representations**

A person commits an offence if, in a public place, he or she -

- (a) displays, distributes, exposes to view, or sells, or offers for sale, in a manner likely to cause offence, any indecent or offensive picture, or other representation or written or printed matter; or
- (b) draws, prints, writes, or otherwise produces, any indecent or offensive figure, letter, picture, word or other representation or matter so that the same is in the public view.

#### 7. **Dangerous acts**

(1) A person commits an offence if, in a public place, he or she -

- (a) activates, handles or uses any material, object or thing which results in injury to a person, or which threatens a

person, or which damages property, or he or she acts in a manner likely to result in such injury, threat or damage;

- (b) introduces or handles any material, object or thing, or any liquid or solid substance, which, by its nature, or by reason of the manner of its introduction or handling, creates a new source of danger to persons or property, or is likely to do so;
- (c) lights, uses, or benefits from, a fire, other than in or on a public facility provided by the municipality for that purpose;
- (d) attaches any object to, or suspends any object from, a canopy, bridge, verandah or other projection, or a pillar, pole or post, subject to the provisions of section 9(e); or
- (e) performs any other act which may cause injury to a person or damage to property, unless he or she is authorised or permitted by law to do so, or does so with the written permission of an authorised official and in accordance with any conditions imposed by him or her.

(2) Regarding the discharge or use of fireworks –

- (a) no person shall discharge fireworks from any private property or public place without the written consent of the municipality;
- (b) applications for the written consent contemplated in terms of subsection (a) shall be -
  - (i) submitted in writing 14 (fourteen) days prior to the event; and
  - (ii) accompanied by the written consent of the immediate neighbours who occupy abutting properties and properties across the road from the private property or public place from which the fireworks will be discharged;
- (c) nothing contained in this section shall be construed so as to detract from the requirements of the Explosives Act, 2003 [Act No. 15 of 2003], or any regulations promulgated in terms thereof.

## 7. Littering

- (1) A person commits an offence if, in a public place, he or she -

- (a) abandons, discards, discharges, or spills, or causes or allows to be discharged or spilled, any rubbish or other waste material or thing, whether liquid or solid, except in a receptacle provided for the purpose; or
  - (b) removes from a receptacle, provided for the disposal of refuse, any of its contents, and causes same to be discharged from such a receptacle.
- (2) A person who causes or incites another person to perform any of the acts described in subsection (1) shall be guilty of an offence.
  - (3) Any material or thing that a person drops or allows to fall without being immediately retrieved by him or her shall, for the purposes of subsection (1), be deemed to have been discarded by him or her.
  - (4) Any material or thing found in a public place in circumstances giving rise to a reasonable suspicion that an offence has been committed in terms of subsection (1), and which bears the name of a person or in respect of which there is a reasonable suspicion that it is or was the property or under the control of that person, shall, for the purposes of subsection (1), be deemed to have been abandoned or discarded by that person, until the contrary is proved.
  - (5) A person who sweeps, or in any other way introduces, any rubbish or waste material or thing into a public place shall be deemed to have discarded it there, for the purposes of subsection (1).
  - (6) A person who has been observed by an authorised official to have contravened the provisions of subsection (1) may be directed by him or her to remove the rubbish, material or thing or to place it in a receptacle provided by or on behalf of the municipality, and failure to comply with such direction shall constitute an offence.

## **8. Cleaning of sidewalks and verges**

- (a) An occupier of premises in or on which there is carried on any business, occupation, trade or manufacturing shall at all times, while any such activity is being carried on, keep any sidewalk and verge abutting on or adjoining the premises, including the gutter and kerb, free of litter, and shall keep the sidewalk and verge in a clean and satisfactory state, and, to this end, remove all litter therefrom.

- (b) The occupier referred to in subsection (a) shall cause all litter removed in terms of said subsection to be placed in refuse receptacles provided by or on behalf of the municipality, or, with the written consent of an authorised official, to be disposed of in a manner approved by said authorised official.

## 9. **Obstructions**

A person commits an offence if, in a public place, he or she -

- (a) leaves any thing unattended, having introduced or placed the thing there, so as to cause or be likely to cause an obstruction to persons or vehicles;
- (b) carries, deposits, handles or introduces any thing, so as to be likely to obstruct or interfere with the free movement of persons or vehicles, or with the use of the public place by persons or vehicles, or to cause injury to any person, or damage to any property;
- (c) deposits on its surface any thing, for the purpose of, or in the course of, loading or unloading a vehicle, or of delivering same to premises having access to such public place, for a longer period than is reasonably necessary for that purpose;
- (d) obscures a road traffic sign, as defined in the National Road Traffic Act, 1996 [Act No. 93 of 1996];
- (e) hangs or suspends anything from or above a public place, or causes or allows anything to protrude above its surface or to encroach upon it, provided that prior written consent may be obtained from the municipality, which consent may be given subject to conditions and restrictions deemed necessary;
- (f) gathers with or causes a gathering of other persons in a place or manner so as to, or so as to be likely to, obstruct or restrict or interfere with the movement of persons or vehicles, or the use or enjoyment of a public place by persons or vehicles;
- (g) performs any other act which has, or is likely to have, a result described in subsection (b).

## 10. **Disposal of property found in a public place**

- (1) When anything has been left in a public place, in contravention of section 9, an authorised official may remove it to a store established by the municipality for this purpose, provided that, if such a thing, in the reasonable opinion of the authorised official, has no commercial value, he or she may dispose of same in

such manner as he or she deems fit, and the person who has committed the offence shall be liable to the municipality for the cost of such disposal, as determined by such authorised official.

- (2) Items which have been removed to a store in terms of subsection (1) shall be released to any person who, within 7 (seven) days after such removal, or within such longer period as may be allowed by the authorised official in charge of such store, has demonstrated that he or she is the owner of the items, or entitled to their possession, after payment of the cost of removal and storage, as determined by such authorised official, in accordance with a prescribed tariff of charges.
- (3) Items which have not been released in terms of subsection (2) shall be sold or disposed of in such manner and after such notice as the authorised official in charge of the store deems fit, having regard for the nature of the items.
- (4) The proceeds of any sale in terms of subsection (3) shall be utilised for the payment of -
  - (a) the cost of removal and storage, as determined in terms of subsection (2);
  - (b) any costs which may have been incurred in attempting to trace the owner; and
  - (c) the costs of sale, the remaining balance being forfeited to the municipality if not claimed within 1 (one) year of the date of sale by a person who demonstrates his legal right thereto.
- (5) If the proceeds of the sale are not sufficient to meet the costs referred to in subsection (4), then the owner of the items sold and the person who committed any offence in relation thereto shall be jointly and severally liable to the municipality for payment of the unsatisfied balance.
- (6) If the items cannot be sold in terms of subsection (3), then the authorised official in charge of the store may dispose of the items in such manner as he deems fit, and the provisions of subsection (5) shall, *mutatis mutandis*, apply in respect of any costs incurred in effecting such disposal.
- (7) The exercise of any powers conferred by this by-law shall not render the municipality or any authorised official liable for any loss or theft of, or any damage to, any thing removed in terms of subsection (1), except where such loss, theft or damage is a direct result of the negligence of the municipality or authorised official in question.



## 11. **Obstructions caused by plants**

- (1) If a tree, shrub or other plant growing on any private property which abuts on a public place, or any portion of such plant -
- (a) obstructs the view of the driver of any vehicle in such public place;
  - (b) obstructs or causes a nuisance to persons using such public place; or
  - (c) obscures a road traffic sign,

an authorised official may serve a notice on the owner or occupier of the private property, requiring him or her to cut down, remove or trim the plant from which the nuisance originates, to an extent, and within the period, stated in the notice, and any person who fails to comply with such notice within the period stated shall be guilty of an offence.

- (2) If a person on whom a notice has been served in terms of subsection (1) fails to comply with the terms thereof within the period stated therein, then an authorised official may cause the work specified in the notice to be carried out, and such person shall be liable to the municipality for the reasonable cost of the work, as assessed by such authorised official.

## 12. **Gatherings**

- (1) No person shall convene, or participate in, any gathering at any public place, outdoor facility or municipal building so as to -
- (a) constitute a nuisance, as defined; or
  - (b) contravene any provision of the Regulation of Gatherings Act, 1993 [Act No. 205 of 1993].
- (2) The provisions of subsection (1) shall not be interpreted so as to detract from any person's constitutional right to assemble, demonstrate, picket and present petitions.

## 13. **Amplification devices and equipment**

- (1) No person shall, without the prior consent of the municipality, use or permit to be used any megaphone, loudspeaker, or other device for the reproduction or amplification of sound, in or upon any public place, for the purpose of making announcements, advertising, or doing anything of a similar nature.

- (2) The municipality may refuse to grant such consent, if it has reasonable grounds for believing that the use of any such megaphone, loudspeaker or other device will cause, or is likely to cause, a nuisance, as defined.
- (3) The municipality may withdraw its consent, if it appears that a nuisance has been caused, or is likely to be caused.

#### 14. **Games**

A person commits an offence if, in a public place, he or she plays any games, or indulges in any pastimes, such as, but not limited to, the use of roller skates, rollerblades or skateboards, in a manner that causes a nuisance.

#### 15. **General offences**

- (a) A person commits an offence if, in a public place, upon private property, at an outdoor facility or in a municipal building, the said facility or building being owned by or under the control of the municipality, he or she acts, or omits to act, such that a nuisance is caused in circumstances that are under his or her control.
- (b) The provisions of subsection (a) shall not apply to the extent that a person acts lawfully, in the exercise of a right, or in the performance of a duty.

### **CHAPTER 3**

#### **PRIVATE PROPERTY**

#### 16. **Use of private property**

- (1) A person commits an offence if, on any private property, he or she -
  - (a) excavates or removes soil or other material from a position in relation to other premises or a public place so as to, or to be likely to, remove lateral support from such premises or public place, or to create a source of danger to life or damage to property;
  - (b) being the owner or occupier of such private property, allows any well, pond, reservoir, swimming pool, pit, hole, excavation, earthwork, tree or other vegetation on such private property to be in such a condition or to be so

unprotected as to constitute a danger to the safety of persons or property;

- (c) causes, or allows, anything to project from the private property over or into a public place, except in an area zoned for industrial purposes in terms of a zoning scheme and to an extent necessarily consistent with the lawful land use thereof;
  - (d) being the owner or occupier of such private property, deposits, stores or causes, or allows or permits to be deposited or stored or to accumulate so as to be visible from a public place, abandoned, derelict or disused furniture, machinery, vehicles or other objects or parts thereof, or scrap metal or other derelict or waste materials;
  - (e) without the consent of the owner or occupier thereof, attaches or places anything to or on any private property, or in any way defaces such private property, whether by the use of chalk, ink, paint, or by any other means whatsoever, unless he is authorised by any law to do so.
- (2) An authorised official may order a person who has contravened or is contravening subsection (1)(d) or (e) to remove the item to which the contravention relates from the private property concerned within a specified time, and, if he fails to do so, then the provisions of section 10 shall, *mutatis mutandis*, apply.

## 17. **Burglar alarms**

- (1) The owner or occupier of a private property in which a burglar alarm device has been installed shall be guilty of an offence if the burglar alarm device continues to sound either continuously or intermittently for more than 10 (ten) minutes after it has been activated by any cause whatsoever.
- (2) Such a device shall be deemed to be sounding intermittently for the purposes of subsection (1) for so long as it continues to sound at any interval without the intervention of a new cause, provided that it shall be a defence to a charge of contravening subsection (1) if it can be proved that an automatic cut-off mechanism fitted to such device has failed to operate, for reasons beyond the control of the occupier, and without negligence on his or her part.
- (3) When a burglar alarm device has been installed in any private property, the owner or occupier of the private property shall, unless a mechanism referred to in subsection (2) has been fitted, either erect, and maintain, at the main entrance to the

private property, a notice specifying the names and telephone numbers of persons who have access to the private property at all times for the purpose of deactivating the device, or shall arrange for an automatic response to an alarm to operate at all times.

**18. Air-conditioning appliances**

- (1) The owner or occupier of a private property who has installed therein, or who maintains and operates therein, an air-conditioning appliance shall ensure that such appliance is so installed, maintained and operated so as to preclude -
  - (a) the generation of noise, odours or vibrations which cause a nuisance, as defined; and
  - (b) the discharge or generation of condensate onto a public place so as to cause a nuisance, as defined.
- (2) Nothing contained in this section shall be construed so as to detract from the requirements of the National Building Regulations and Building Standards Act, 1977 [Act No. 103 of 1977] and the Occupational Health and Safety Act, 1993 [Act No. 85 of 1993] and any regulations promulgated in terms of the aforesaid legislation.

**19. Nuisances arising from the use of private property**

- (1) No owner or occupier of private property shall -
  - (a) use it for a purpose;
  - (b) cause, allow or permit its use for a purpose;
  - (c) organise or allow or permit an activity, event or function thereupon, save for birthday, engagement, wedding, or similar, celebrations,

which is contrary to the zoning scheme, or similar restrictions imposed by town planning legislation, and which, by its nature or otherwise, or by reason of its consequences, causes a nuisance.

- (2) Notwithstanding subsection (1), nothing shall prevent the owner or occupier of any private property from engaging in the following activities -
  - (a) any authorised building or contract work undertaken by him- or herself, or on his or her behalf; and

- (b) participating in any hobby or activity involving any item owned or used by him or her which may require the use of an electrical appliance such as an angle grinder, sanding machine or similar item, provided that -
  - (i) the use of such appliance does not cause interference to television or radio reception in the neighbourhood, that every precaution possible is taken to minimise noise therefrom and the duration of use thereof, and that such activity is not for or related to any business conducted from the private property or elsewhere; and
  - (ii) such building or contract work and the use of electrical appliances for such hobby or activity is confined to the hours of 07h00 to 19h00.
- (3) Whenever an authorised official is of the reasonable opinion that a person engaged in a hobby or activity is contravening subsections (1) or (2), he or she may instruct the owner or occupier of the private property, or any person responsible for or participating in the use, activity, event or function, to take such steps as the authorised official specifies, to abate the nuisance, or to avoid the creation of a nuisance, or, if this can only be achieved by the cessation of the use, activity, event or function, to bring it to an end forthwith, or within a time prescribed by the authorised official.
- (4) If the owner, occupier or person responsible for, or participating in, the use, activity, event or function mentioned in subsection (3) fails to abide by any notice or instruction given by an authorised official, then such official may issue a notification in terms of Section 341 of the Criminal Procedure Act, 1977 [Act No. 51 of 1977] upon the owner, occupier or person responsible.

## 20. **Lighting of fires**

- (a) No person shall, on any private property, light a fire, or burn, or attempt to burn, any rubbish or refuse, or any grass or other vegetation, without taking adequate precautions to prevent the uncontrolled spread of the fire, or the creation of a nuisance, whether as a result of the production of ash, flames, fumes, heat, smoke, or otherwise.
- (b) Should any person persist with the burning of any matter without taking effective precautionary measures as described in subsection (a), where such burning is the subject of a reasonable complaint lodged with the municipality, the municipality, through its authorised official, shall be entitled to

enter upon the private property on which the burning is taking place, in order to extinguish the fire, and to charge with an offence the person concerned.

**21. Slaughter of animals and disposal of carcasses**

- (1) No person shall –
  - (a) slaughter any animal at any place other than an abattoir;
  - (b) permit the slaughter of any animal at any place under his or her control, unless the place is an abattoir; or
  - (c) sell or provide meat for human or animal consumption, unless the meat has been slaughtered at an abattoir.
- (2) The provisions of subsection (1) do not apply to slaughter for own consumption, or for cultural or religious purposes.
- (3) No person shall bury, or place, any carcass or part of a carcass, or permit any carcass, dead thing, or any decomposable or offensive material or thing, which is his or her property, or which is under his or her care or control, to be placed on his or her private property or elsewhere, or to remain thereon so as to cause a nuisance.
- (4) In the event of any person not being able to dispose of any offensive matter or thing or bury any carcass in terms of subsection (3), he or she shall arrange with the municipality for it to effect such disposal at the prescribed fee.
- (5) Nothing contained in this section shall be construed so as to detract from the requirements of the Meat Safety Act, 2000 [Act No. 40 of 2000], and any regulations promulgated in terms thereof.

**22. Removal of weeds, undergrowth and bush**

- (1) No person shall permit any rank grass, undergrowth, or declared weeds or invader plants, as listed in the Conservation of Agricultural Resources Act, 1983 [Act No. 43 of 1983], and any regulations promulgated in terms thereof, to grow upon any private property or vacant land occupied or owned by him or her.
- (2) A person shall comply with any notice issued by an authorised official, requiring him or her to destroy or cut down and remove, or cause to be removed, any such rank grass, undergrowth, or declared weeds or invader plants, within a time to be stated in

such notice, and in a method as stated in the Conservation of Agricultural Resources Act, 1983 and its regulations.

- (3) If such person fails to comply with such written notice, then he or she shall be guilty of a contravention of this by-law, and the municipality may take such steps as it may deem necessary, to carry out, on behalf of the said person, the requirements of the said notice, and may recover the cost thereof from the said person, in accordance with the municipality's tariff of charges.

### **23. Control of mosquitoes, flies, rodents and other vermin**

- (1) It shall be the duty of every owner and occupier to prevent mosquitoes, flies, rodents or other vermin from developing or being harboured on any private property owned or occupied by such owner or occupier, and any such owner or occupier who fails to comply with the provisions hereof shall be deemed to have contravened this by-law.
- (2) The owner or occupier of private property shall, on being served with a notice signed by an authorised official, carry out such measures as may be specified therein, for the removal of conditions favourable for the development of, or harbouring of, mosquitoes, flies, rodents or other vermin, within the time specified in the notice.
- (3) If the owner or occupier refuses to carry out the measures specified in a notice issued in terms of this by-law, or fails to do so within the time specified, then an authorised official may arrange for such measures to be carried out, and the reasonable costs incurred in so doing shall be recoverable by the municipality from the person upon whom the notice is served, at a charge specified in the municipality's tariff of charges.

### **24. Keeping or management of a brothel**

- (1) No person shall keep or manage, or act or assist in the keeping or management of, a brothel upon any private property.
- (2) No person, being the owner, lessee or occupier of any private property, shall knowingly permit such private property or any portion thereof or any room therein to be used as a brothel or for the purpose of prostitution, or to be a party to continued use thereof for such purposes.
- (3) No person, being the owner of any private property or the agent of such owner, shall let such private property or any portion thereof or any room therein, with the knowledge that such

private property or any portion thereof or any room therein is to be used as a brothel or for the purposes of prostitution.

- (4) Nothing contained in this section shall be construed so as to detract from the requirements of the Sexual Offences Act, 1957 [Act No. 23 of 1957].

## CHAPTER 4

### MUNICIPAL PROPERTY AND PROPERTY UNDER THE CONTROL OF THE MUNICIPALITY

#### 25. General offences

- (1) A person commits an offence if, in relation to any property in the ownership or possession of, or under the control of, the municipality, whether movable or immovable, and including any public place, he or she -
- (a) permits, or causes to be done, any act which may, in the reasonable opinion of the municipality, cause soil or sand erosion;
  - (b) permits, or causes to be done, any act which may, in the reasonable opinion of the municipality, result in the spreading of driftsand on a beach;
  - (c) permits, or causes to be done, any cutting of, removing of, or interfering with, natural vegetation, which may, in the reasonable opinion of the municipality, result in damage to, or destruction of, such natural vegetation;
  - (d) discards any bait or baited hooks, or refuse, or any unsightly material on such property;
  - (e) wilfully or negligently damages or destroys such property or any part thereof;
  - (f) removes any earth, sand, shale, stone, turf or any other material or part thereof;
  - (g) breaks, cuts, destroys or removes any bush, shrub, tree or other plant, or removes any branch, flower, leaf or other part thereof;
  - (h) attaches to, or places on or next to, such property any thing, including any advertisement, flyer, pamphlet, placard or poster, or other illustrative, written or printed matter, or hangs or suspends anything on or from it;



- (i) defaces any such property, whether by the use of chalk, ink or paint, or by any other means whatsoever;
  - (j) extinguishes any lamp or light, or displaces or removes any barricade, enclosure, fence, lamp, light, notice or sign;
  - (k) makes any excavation in, or disturbs the surface of, such property;
  - (l) climbs or sits upon, hangs onto, or mounts, any such property;
  - (m) introduces any object or material, or erects any structure, on such property;
  - (n) enters such property, or remains there;
  - (o) allows, causes or permits any other person to commit any of the aforesaid acts, unless he or she does so in the performance of a lawful right or duty, or with the prior consent of an authorised official, or in accordance with the provisions of any law.
- (2) Notwithstanding the foregoing, nothing shall prevent the owner or occupier of private property from planting and maintaining grass and plants on that portion of the verge of a street which abuts on such municipal property or property under the control of the municipality, provided that the lawful passage of vehicular and pedestrian traffic and the lawful parking of vehicles is not thereby obstructed and the grass and plants are properly maintained and do not cause a nuisance.
- (3) Any person who is convicted of an offence in terms of subsection (1) shall pay to the municipality the cost of remedying any loss or damage suffered by the municipality as a result of the commission of that offence, and the cost of the removal and disposal of any material, object or structure involved in the commission of the offence, and, for this purpose, the provisions of section 10 shall apply.

## **CHAPTER 5**

### **PRESUMPTIONS, OFFENCES AND PENALTIES**

#### **26. Presumptions**

When an employee, in the course of his or her employment, performs any act, or is guilty of an omission, which constitutes an offence in terms of this by-law, the employer shall also be deemed to have performed the act, or to be guilty of the omission, and he or she shall be liable on conviction for the penalties mentioned in terms of section 27, unless it can be proved that -

- (a) in performing the act, or permitting the omission, the employee was acting without his or her employer's knowledge and consent;
- (b) all reasonable steps were taken by the employer to prevent the act or omission in question; and
- (c) it was not within the scope of the authority or the course of the employment of the employee to perform the act or permit the omission in question.

## 27. **Offences and penalties**

- (1) Any person who-
  - (a) contravenes any provision of this by-law, which contravention is not expressly stated to be an offence;
  - (b) contravenes any condition or restriction imposed upon the granting of any application, approval, authority, consent or permission in terms of this by-law; or
  - (c) fails to comply with the terms of any notice served upon him or her, or instruction to him or her in terms of this by-law,

shall be guilty of an offence.

- (2) Any person who contravenes any of these provisions shall be guilty of an offence, and liable, upon conviction, to a fine not exceeding R60 000 (sixty thousand rand), or imprisonment for a period not exceeding 12 (twelve) months, or to such fine and such imprisonment, provided that, in the case of a continuing offence, a fine not exceeding R600 (six hundred rand) may be imposed for each day on which the contravention continues.

## 28. **Regulations**

- (1) The municipality may make regulations regarding –
  - (a) the granting of written permission and accompanying conditions for –

- (i) the performance of a dangerous act, as contemplated in terms of section 6(1)(e); and
  - (ii) the discharge of fireworks in terms of section 6(2);
- (b) the disposal of litter by an occupier of premises in or on which there is carried on any business, occupation, trade or manufacturing, as contemplated in terms of section 8(b);
- (c) the granting of written consent and accompanying conditions and restrictions for the hanging or suspension of anything from or above a public place or so as to cause an obstruction, as contemplated in terms of section 9(e);
- (d) the disposal of property found in a public place, including -
  - (i) the municipality's identification and designation of a store for property removed in terms of section 10(1);
  - (ii) guidelines for the determination of the commercial value of property so removed;
  - (iii) a tariff of charges for the removal and storage of items, as contemplated in terms of section 10(2);
  - (iv) procedures to be followed with regard to the sale or disposal of items in terms of sections 10(3) and (6);
- (e) the contents and service of a notice on the owner or occupier of private property, the carrying out of work necessary to give effect to the notice, and guidelines for the determination of the reasonable costs thereof, as contemplated in terms of sections 11(1) and (2);
- (f) the granting of consent for the use of amplification devices and equipment, as contemplated in terms of section 13;
- (g) the prevention of nuisances on private property, including –
  - (i) procedures for the removal of any item from private property, as contemplated in terms of section 16(2);

- (ii) the giving of instructions and notification to an occupier of private property, for the abatement or cessation of a nuisance, as contemplated in terms of sections 19(3) and (4);
  - (iii) procedures for the entering of private property, for the extinction of fires thereon, as contemplated in terms of section 20(b);
  - (iv) a tariff of charges for the disposal and burying of any offensive matter or thing, including carcasses, as contemplated in terms of section 21(4);
  - (v) the contents and service of a notice for the removal of vegetation, and procedures for effecting the removal by the municipality itself and a tariff of charges therefor, as contemplated in terms of sections 22(2) and (3); and
  - (vi) the contents and service of a notice for the control of vermin, and procedures for effecting control by the municipality itself and a tariff of charges therefor, as contemplated in terms of sections 23(2) and (3);
- (h) the provision of consent by an authorised official in respect of any act with regard to municipal property and property under the control of the municipality, as contemplated in terms of section 25(1)(o);
- (i) a tariff of charges, or schedule of costs, for the remedying of any loss or damage suffered by the municipality as a result of the commission of an offence in terms of section 25(3);
- (j) (i) the prescription of penalties for the offences contemplated in terms of section 27; and
- (ii) the amendment of such penalties from time to time;
- (k) any matter which may be prescribed in terms of this by-law, and any matter which may facilitate the application of this by-law.
- (2) [a] The municipality shall, not less than 1 (one) month before promulgating a regulation in terms of subsection 1, cause a draft of the regulation to be communicated to the local community and to be made public in terms of Sections 21 and 21A of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000], together with a notice

declaring the intention of the municipality to issue such a regulation and inviting comments or representations.

- [b] If the municipality decides to alter the draft regulation as a result of comments or representations received pursuant to such invitation, then it shall not be necessary to communicate and make public the alteration before the amended draft is promulgated as a regulation.

29. **Repeal of by-laws**

Any by-laws relating to the prevention of nuisances adopted by the municipality or any erstwhile municipal council now comprising an administrative unit of the municipality shall be repealed from the date of promulgation of this by-law.

30. **Short title**

This by-law is called the By-law Relating to the Prevention of Nuisances, 2004, and takes effect on a date determined by the municipality by proclamation in the Provincial Gazette.