

LOCAL AUTHORITY NOTICE

Gazette No: 1477 **Notice No:** 29 **Gazette:** ECP **Gazette:** Eastern Cape **Date:** 20060220 **Database:** Provincial Gazettes

MUNICIPALITY OF NKONKOBE

BY-LAW RELATING TO SOLID WASTE DISPOSAL

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, 1996 [Act No. 108 of 1996], the By-law Relating to Solid Waste Disposal.

Purpose of By-law

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

CHAPTER 1

DEFINITIONS

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

"**attendant**" means an employee, agent or contractor of the municipality duly authorised to control or manage a disposal site;

"**bin liner**" means a plastic bag, as prescribed by the municipality, for placement inside a container;

"**builder's waste**" means any waste resulting from or generated by the construction, renovation or demolition of a building or other structure or works;

"**bulky waste**" means any waste, other than industrial waste, which emanates from any premises and which, by virtue of its mass, shape, size or quantity, cannot be conveniently accumulated in or removed from a container with a bin liner;

"**charge**" means the charge prescribed by the municipality by resolution of its municipal council;

"**container**" means a standard type of refuse container as approved by the municipality;

"**day**" means a calendar day, including a Saturday, Sunday and any public holiday;

"**disposal site**" means a site used for the accumulation of waste, with the purpose of disposal or treatment or such waste;

"**domestic waste**" means any waste usually emanating from, or incidental to, the normal occupation of a dwelling, flat, hotel, boarding house, restaurant, guest house, hospital, court, school, government office, café, shop, old age home or business premises, but shall not include stones, soil, gravel, bricks, waste liquids, sewerage, or industrial, builder's or trade waste;

"**garden waste**" means any waste which is generated as a result of normal gardening activities, such as grass cuttings, leaves, trees, plants, flowers, weeds and other similar light matter;

"**industrial waste**" means any waste generated as a result of manufacturing, maintenance, production and dismantling activities;

"**Minister**" means the Minister of Environmental Affairs and Tourism;

"**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;

"**municipal service**" means, unless otherwise stated, the provision or supply of solid waste disposal and waste management services;

"**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, for the purposes hereof, the person who controls and resides in, or who controls and otherwise uses, immovable property, and includes joint occupiers;

"**offensive matter**" means such matter, including fluids, that may be classified as such by the municipality from time to time;

"**owner**" means, and includes -

- [a] the person or persons in whom the registered title in immovable property is vested;
- [b] the person administering an estate as curator, executor, proxy, trustee or administrator of a person in whom the legal title in immovable property is vested and who is insolvent, deceased or of unsound mind;
- [c] the agent or persons receiving the rental of immovable property in cases where the registered owner is away or absent;
- [d] the beneficiary of a usufruct over immovable property; or
- [e] the fiduciaries of municipal property;

"trade waste" means any trade material or trade waste, as determined by the municipality and agreed to by the owner or occupier;

"transfer station" means any site set aside by the municipality, for the interim storage of waste, pending its removal to and disposal at a disposal site.

"waste" means any matter, whether gaseous, liquid or solid or any combination thereof, which is from time to time designated by the Minister by notice in the Gazette as an undesirable or superfluous by-product, emission, residue or remainder of any process or activity, as contemplated in terms of Section 1 of the Environment Conservation Act, 1989 (Act No. 73 of 1989).

CHAPTER 2

WASTE REMOVAL AND DISPOSAL

2. Waste removal

- [a] The municipality shall provide municipal services as defined, and subject to the provisions of national legislation to this effect.
- [b] The charges payable to the municipality for the provision of such municipal services, and the amount to be deposited with the municipality by any person making use of the aforesaid municipal services, shall be determined by the municipality from time to time.

3. Use of municipal services compulsory in respect of domestic waste

- [1] Every owner or occupier shall make use of municipal services in respect of all domestic waste which emanates from immovable or municipal property.

[2] In the event that no municipal services are provided or supplied to the immovable or municipal property in question, the owner or occupier shall take such steps as may be necessary to ensure that such domestic waste is -

[a] removed regularly, so as not to constitute a nuisance for neighbouring owners or occupiers; and

[b] disposed of at a disposal site.

4. **Municipality to remove domestic waste**

[1] Subject to subsection [2], no person other than the municipality shall remove domestic waste from any immovable or municipal property, or dispose of it in any manner whatsoever.

[2] A person may remove domestic waste from such immovable or municipal property, or dispose of it, only in the event that -

[a] no municipal services are provided or supplied to the immovable or municipal property in question, as contemplated in terms of the preceding section; or

[b] such person has obtained written authorisation from the municipality to undertake such removal or disposal.

5. **Accumulation and removal of domestic waste**

[1] Subject to the provisions of subsection [6], the municipality may require every owner or occupier of a property to provide on such property a container with a capacity of not less than 85 litres, constructed of a material approved by the municipality, and with a close-fitting lid and handles, for the accumulation of domestic waste.

[2] If the municipality is of the opinion that more than one container for the accumulation of domestic waste is essential on a particular property, then it may, according to the quantity of domestic waste normally accumulated on such property, require the occupier thereof to provide as many containers on such property, as it may determine.

[3] If a container used by an owner or occupier does not comply with the requirements of the municipality, then the municipality may instruct such owner or occupier to obtain and use some other suitable container complying with its requirements.

[4] The municipality may, where it considers it necessary or desirable, supply containers to particular classes of owners or occupiers, or to particular classes of properties, or in particular areas, in which event

the cost of such containers may be recovered from the owners or occupiers of the properties concerned.

- [5] All containers shall be equipped with bin liners as may be presented by the municipality, unless the municipality determines otherwise.
- [6] The municipality may, generally or in particular, issue instructions to owners and occupiers with regard to the manner in which, or the arrangements according to which, domestic waste or refuse bags shall be placed in containers, be removed therefrom, be tied, and thereafter be placed or deposited for removal, and any disregard of such instructions shall constitute a contravention of this by-law.
- [7] No material, including any liquid, which by reason of its mass or other property is likely to render such bin liners or containers difficult or dangerous for the municipality's employees to handle or carry shall be placed in such bin liners or containers.
- [8] The containers or bin liners or both shall be removed by the municipality at such intervals as the municipality may deem necessary, but only if such containers or bin liners or both have been placed or deposited at the prescribed places, as determined by the municipality.
- [9] In any case where the occupier of a property is not also the owner, the municipality may hold the owner him- or herself, instead of the occupier, liable for compliance with the provisions of this by-law.
- [10] The municipality may, in specific cases, impose different requirements, other than the use of an 85-litre container, for the removal and disposal of domestic waste, and the owner or occupier of immovable property, as the case may be, shall be obliged to comply with the aforesaid directions of the municipality.

6. **Containers for accumulation of domestic waste**

- [a] Subject to subsection [b], the owner or occupier of immovable or municipal property shall ensure that all domestic waste generated on such property shall be accumulated only in a container contemplated in terms of the preceding section.
- [b] In the event that no municipal services are provided or supplied to the immovable or municipal property in question, the owner or occupier may accumulate domestic waste in a container other than one contemplated in terms of the preceding section, provided that such accumulation does not constitute a nuisance for neighbouring owners or occupiers.

7. **Garden waste**

- [1] Garden waste shall be removed from the property where it accumulates, according to any arrangements which the owner or occupier of such property has made with the municipality or private contractors.
- [2] If any accumulation of garden waste is not removed within a reasonable time, and if such accumulation creates a nuisance or danger to public health, or a fire hazard to property, then the municipality shall instruct such owner or occupier in writing to effect the removal of such accumulation within a specified period, no later than 14 days from the date of such instruction.
- [3] Where necessary, and subject to the availability of its facilities and resources, the municipality may, in its discretion, and upon application by the owner or occupier of property, remove an accumulation of garden waste from such property, at the cost of the owner or occupier, and in accordance with such terms and conditions as the municipality may determine.
- [4] No garden waste may be dumped, kept or stored in or on any pavement or vacant ground.

8. **Removal of bulky or industrial waste**

- [1] The owner or occupier of premises on which bulky or industrial waste is generated shall ensure that such waste is disposed of in terms of this by-law within a reasonable period, but no later than 14 days after the generation thereof.
- [2] Bulky or industrial waste shall, once it has been removed from the premises on which it was generated, be deposited at a disposal site designated for such waste.
- [3] The removal and disposal of bulky or industrial waste may be undertaken by the municipality, provided that -
 - [a] the owner or occupier of the premises in question applies to the municipality, pays such costs as may be prescribed, and complies with any terms and conditions determined by the municipality; and
 - [b] no disposal site within reasonable proximity to the premises has been designated for such waste.
- [4] No obligation is imposed on the municipality in terms of this by-law to remove bulky or industrial waste.

9. **Builder's waste**

- [a] Builder's waste which may have accumulated in the course of the construction, alteration, renovation or demolition of any structure or works shall be removed from the property concerned, according to suitable arrangements to be made by the owner or occupier of such property with the municipality.
- [b] If there is any undue delay in the removal of such waste after the completion of the works involved, then the municipality may direct, by written notice to such owner or occupier, that the builder's waste be removed to an approved disposal site, within a specified time, no later than 14 days from the date of such notice.

10. **Trade waste**

The municipality may enter into an agreement with the owner or occupier of any premises, for the removal of trade waste by the municipality, at a charge fixed by the municipality.

11. **Abandoned objects**

Any object, other than a vehicle deemed to have been left or abandoned anywhere in terms of the National Road Traffic Act, 1996 [Act No. 93 of 1996], which may be reasonably regarded by the municipality as having been abandoned, may be removed and disposed of by the municipality, in any manner as it may deem fit.

12. **Recycling**

- [1] The municipality shall determine requirements for the recycling of waste.
- [2] No waste may be stored upon any premises, for purposes of recycling, where such storage constitutes a nuisance to the owners or occupiers of neighbouring properties.
- [3] Notwithstanding the provisions of subsection [2], any person involved in any way in recycling shall comply with all national legislation to this effect.

CHAPTER 3

DISPOSAL SITES AND TRANSFER STATIONS

13. Disposal sites and transfer stations for waste

- [1] The municipality shall establish, provide and operate disposal sites and transfer stations, where waste shall be disposed of, deposited or dumped.
- [2] Any person disposing of, depositing, or dumping, waste in any place other than one established and provided by the municipality shall be guilty of an offence, with the exception that waste may be disposed of, deposited or dumped at a disposal site established, provided or operated by any person who is the holder of a current permit duly issued in terms of Section 20 of the Environment Conservation Act, 1989 (Act No. 73 of 1989).
- [3] The municipality may, from time to time, determine tariffs for the disposal of, depositing of, or dumping of, waste at a disposal site or transfer station.

14. Ownership of waste

All waste removed by the municipality, and all waste on disposal sites or transfer stations controlled by the municipality, shall be the property of the municipality, and no person who is not duly authorised by the municipality to do so shall remove, or in any manner interfere with, such waste.

15. Liability

- [1] Where any object has been removed and disposed of by the municipality in terms of section 17, the owner or person responsible for such object shall be liable to pay the municipality the charge fixed by it for its removal, disposal or custody.
- [2] For the purposes of subsection [1], the person responsible shall be –
 - [a] the owner of the object, including any person who is entitled to be in possession of the object by virtue of a hire purchase agreement or an agreement of lease, at the time when it was abandoned or deposited in the place from which it was so removed, unless he or she can prove that he did not know that it had been deposited in such place; or
 - [b] any person who deposits the object in the said place; or

- [c] any person who knowingly permits or permitted the object to be deposited in the said place.

16. Control and management of disposal sites and transfer stations

- [a] The municipality shall control and manage any disposal site in respect of which it is a current permit holder in terms of Section 20 of the Environment Conservation Act, 1989 (Act No. 73 of 1989).
- [b] Notwithstanding subsection [a], the municipality may enter into a contract with a person to control and manage a disposal site or transfer station on behalf of the municipality, provided that such contract does not contravene the provisions of the permit referred to in the aforesaid subsection [a] or any applicable legislation.

17. Access to disposal sites and transfer stations

- [1] No person shall enter a disposal site or transfer station, or shall be or remain on such premises, except on such days and at such times as shall be fixed by the municipality from time to time.
- [2] A notice, indicating the days and hours during which a disposal site or transfer station will normally be open for the disposal of, depositing of, or dumping of, waste, shall be displayed by the municipality in a clearly visible place at or near the entrance to such premises.
- [3] The municipality may limit access to a disposal site or transfer station, by permitting access to only those persons who have paid the prescribed fee, and who are in possession of written permission issued by the municipality, authorising them to dispose of, deposit, or dump, waste at a disposal site or transfer station, or authorising them to recycle any materials or objects at or on such site.
- [4] Notwithstanding anything to the contrary contained in this by-law, any employee of the municipality, or anybody acting on behalf of the municipality and duly authorised thereto, may enter a waste disposal site or transfer station at any time in the exercise of his or her duties.
- [5] Any person making use of or entering a disposal site or transfer station shall do so entirely at his or her own risk, and the municipality will not be responsible for the safety of such person, or for any damages or losses sustained by such person, as a result of his or her presence at or on such premises.
- [6] Anybody who enters a disposal site or transfer station, or who is found thereon, in contravention of the provisions of this by-law shall be guilty of an offence.

18. Offloading of waste

- [a] Any person who wishes to dispose of, deposit, or dump, waste at a disposal site or transfer station shall offload such waste at such place within the borders of the said premises as directed by an attendant.
- [b] Any person who disregards the reasonable instructions of an attendant shall be guilty of an offence.

19. Prohibition on disposal of, depositing of, or dumping of, offensive matter

The municipality reserves the right to prohibit the disposal of, depositing of, or dumping of, any offensive matter at a disposal site or transfer station.

CHAPTER 4

GENERAL PROVISIONS

20. Offences and penalties

Any person who contravenes, or fails to comply with, any provision of this by-law shall be guilty of an offence, and liable, upon conviction, to a penalty not exceeding -

- [a] a fine of R60 000, or imprisonment for a period of 12 (twelve) months, or such imprisonment without the option of a fine, or both such fine and such imprisonment;
- [b] in the case of a continuing offence, an additional fine of R600, or an additional period of imprisonment of one day, or such additional imprisonment without the option of a fine, or both such additional fine and imprisonment, for each day on which such offence is continued; and
- [c] a further amount equal to any costs and expenses found by a court to have been incurred by the municipality as result of such contravention or failure.

21. Regulations

- [1] The municipality may make regulations regarding –
 - [a] the conditions in terms of which the municipality shall provide a waste removal and disposal service, as contemplated in terms of sections 2, 3, 4 and 5, including –

- (i) the construction, capacity and number of containers for domestic refuse;
 - (ii) the provision of such containers to particular classes of owners, occupiers or properties;
 - (iii) the construction and capacity of bin liners; and
 - (iv) arrangements with regard to the use of containers, and disposal of domestic waste for removal by the municipality;
- [b] arrangements for the removal and disposal of –
- (i) garden waste, as contemplated in terms of section 7[3];
 - (ii) builder's waste, as contemplated in terms of section 9[a]; and
 - (iii) trade waste, as contemplated in terms of section 10.
- [c] requirements for the recycling of waste, as contemplated in terms of section 12;
- [d] the compilation of a tariff of costs and charges, as may be applied in terms of sections 2[b], 7[3], 8[3][a], 9[a], 10, 13[3], 15[1] and 17[3];
- [e] the establishment, provision and operation of disposal sites and transfer stations for the disposal of different categories of waste mentioned in this by-law;
- [f] the removal and disposal of abandoned objects, as contemplated in terms of section 11;
- [g] the terms and conditions of any contract concluded by the municipality with any person to control and manage a disposal site or transfer station, as contemplated in terms of section 16[b];
- [h] access to disposal sites or transfer stations, as contemplated in terms of section 17, including –
- (i) the days and times during which access shall be permissible;
 - (ii) the construction and contents of notices required to indicate the days and times of access;
 - (iii) the terms and conditions of written permission issued by

the municipality so as to limit access in terms of section 17[3];

- [i] (i) the prescription of penalties for the offences contemplated in terms of section 20; and
 - (ii) the amendment of such penalties from time to time;
 - [j] 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 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.

22. **Repeal of by-laws**

Any by-laws relating to solid waste disposal 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.

23. **Short title**

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