

SALDANHA BAY MUNICIPALITY BY-LAW RELATING TO PUBLIC NUISANCES

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 Saldanha Bay Municipality enacts as follows:-

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1. Definitions

In this by-law, the English text shall prevail in the event of an inconsistency between the different texts, and unless the context otherwise indicates:-

“agent”, in relation to the owner of a property, means a person appointed by the owner of the property-

- (a) to receive rental or other payments in respect of the property on behalf of the owner; or
- (b) to make payments in respect of the property on behalf of the owner;

“animal” means any equine, bovine, sheep, goat, pig, poultry, camel, dog, cat, or other domestic animal or bird, or any wild animal or reptile which is in captivity or

under the control of a person, or insects such as, but not limited to, bees which is kept or under control of a person, and includes a pet;

“**bird**” means a pigeon, peafowl, pheasant, partridge, canary, budgerigar, parrot, ostrich and any other domesticated bird or wild bird which is in captivity or under control of a person;

“**district municipality**” means the West Coast District Municipality established in terms of Section 12 of the Municipal Structures Act, 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 or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“**drunk**” means a person who, by reason of the alcohol or drug which he or she has consumed, has lost control of his or her mental or physical faculties, or both, to such an extent as to render him or her incapable of comporting him- or herself, or of performing any act in which he or she is engaged, with safety to him- or herself;

“**drug**” means any dependence-producing substance, any dangerous dependence-producing substance or any undesirable dependence-producing substance;

“**municipality**” means the Saldanha Bay Municipality established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“**municipal manager**” is the person appointed by the municipality in terms of Section 54A of the Municipal Systems Act, Act 32 of 2000, and includes a person –

- (a) acting in such position; and
- (b) to whom the municipal manager has delegated any power, function or responsibility;

“**objectionable material**” means garden litter, waste, waste material, rubble, scrap metal, article or thing, disused machinery, motor car wrecks as well as the disused parts thereof, refuse from building operations, or any refuse being deposited on any land or premises, including new or used building materials not required in connection with bona fide building operations in progress on any land, and includes any solid, liquid or gas which is or may become offensive or dangerous or injurious to health or which materially interferes or may interfere with the ordinary comfort or convenience of a person;

“**owner**” –

- (a) in relation to an animal, includes the person having the possession, charge, custody or control of such animal;
- (b) in relation to public nuisances in terms of this by-law-
 - (i) a person in whom the legal title to premises is vested;
 - (ii) the tenant of such premises;
 - (iii) in cases where the person in whose name property is registered is insolvent or deceased, or mentally disturbed or whose estate has been designated for profit of his creditors, the person in whom the administration of the premises is vested as trustee, executor, curator or proxy or administrator;
 - (iv) in cases where the owner as described above is absent, the agent of such person; and

- (v) in any case where the premises is inhabited in terms of a servitude or similar right, the inhabitant of such property.

“**pet**” means a tame animal which is normally kept in a household for companionship or entertainment;

“**poultry**” means any fowl, goose, ostrich, duck, pigeon, dove, turkey, muscovy, guinea-fowl, peacock or peahen or bird whether domesticated or wild;

“**premises**” means –

- (a) land or a portion of land, including a public place, whether or not a building or structure has been constructed or erected on such land or portion thereof; or
- (b) a building, structure, tent or caravan and the land on which it is situated and includes any vehicle, carriage, ship or boat;

“**public nuisance**” means any act or omission or condition on any premises, street or public place, including any building, structure or growth thereon, which is offensive or dangerous, or which materially interferes with the ordinary comfort, convenience, peace or quiet of a person or which may adversely affect the safety of people, and “**nuisance**” has the same meaning;

“**public place**” means any land, square, building, park, public parking area, beach, recreation ground or open space which:–

- (a) is vested in the municipality;
- (b) the public has the right to use; or
- (c) is shown on a general plan of a township filed in a deeds registry or a Surveyor-General’s office and has been provided for or reserved for the use of the public or the owners of erven in such township;

“**street**” means any street, road, cycle path, thoroughfare or any other place, including –

- (a) the verge of any such road, street or thoroughfare
- (b) any footpath, sidewalk or similar pedestrian portion of a road reserve;
- (c) any bridge, ferry or drift traversed by any such road, street or thoroughfare;
- (d) any other object belonging to such road, street or thoroughfare, which has at any time been –
 - (i) dedicated to the public;
 - (ii) used without interruption by the public for a period of at least thirty years;
 - (iii) declared or rendered such by the municipality; or
 - (iv) constructed by a local authority, and
 - (v) any land, with or without buildings or structures thereon, which is shown as a street on –
 - (aa) any plan of subdivision or diagram approved by the municipality or other competent authority and acted upon, or
 - (bb) any general plan as defined in the Land Survey Act, 1927, registered or filed in a deeds registry or Surveyor General’s office;

unless such land is on such plan or diagram described as a private street;

“**structure**” means any container, stable, shed, pigsty, kraal, aviary, paddock, poultry house, enclosure, loft or building used for human shelter, business purposes or the keeping or enclosing of animals.

2. Purpose of by-law

The municipality, being aware of the constitutional right of every person to a safe and healthy environment, adopts this by-law with the aim of promoting a safe and healthy environment for all people in the Saldanha Bay area by fostering an environment in which the public in general may enjoy peaceful and harmonious living conditions.

CHAPTER 1 GENERAL PROVISIONS RELATING TO PUBLIC NUISANCES

3. Behaviour and conduct

- (1) Despite the provisions of any other by-law, no person may –
 - (a) do work on or use any premises in such a manner that it interferes with the convenience or comfort of a person or that it becomes a source of danger to any person;
 - (b) subject to any approval in terms of the relevant zoning scheme regulations, carry on any trade, business, profession or hobby which causes discomfort or annoyance to a person;
 - (c) deposit, leave, spill, drop, place or allow any fruit or vegetable peels, broken bottles, glass, refuse, building rubble, garden refuse or thing which is offensive or likely to cause annoyance, danger or injury to a person or allow it to be deposited, left, spilt or dropped;
 - (d) allow the fencing of any premises to fall into a state of disrepair or to become unsightly or dilapidated;
 - (e) allow any building or structure or any portion thereof to fall into a dilapidated, neglected or unsightly state;
 - (f) use any stoep or veranda of any shop or business premises or vacant land adjoining such shop or business premises for the purpose of storing, stacking, dumping, disposing, displaying or keeping articles crates, containers or merchandise in a manner that causes a nuisance or annoyance to a person;
 - (g) disturb the comfort, convenience, peace or quiet of other people by the use of electrical appliances or machinery whether malfunctioning or not;
 - (h) defoul, misuse or damage public toilets or any other public facility or installation;
 - (i) carry or convey in any street or public place, any objectionable material- or thing, which is or may become offensive or dangerous, unless such material or thing is suitably covered;
 - (j) allow any erf to be overgrown with grass, shrubs or other vegetation to such an extent that it may be used as a shelter by vagrants, wild animals, snakes or vermin or may threaten the safety of a person;
 - (k) erect, or allow to be erected or use on any premises any structure in a manner that causes a nuisance to a person; or
 - (l) by an action or omission, directly or indirectly, allow that a nuisance be created or continued;
 - (m) dump, accumulate or lace or cause or permit to be dumped, accumulated or placed objectionable material in or on any erf, street, drain, water, furrow, sewer, thoroughfare, public square or commonage except at such place or places as the municipality may from time to time set aside or approve for such purposes provided, however, that the municipality may permit public garages, workshops and other

- concerns, to keep, store, repair, dismantle or reassemble any motor vehicle or other vehicles or apparatus on premises approved by the municipality;
- (n) bathe or wash him- or herself or any animal, article or clothing in a public stream, pool, water trough, hydrant, fountain or at any place which has not been set aside by the municipality for such purpose;
 - (o) cause a nuisance by-
 - (i) loitering in any street or public place;
 - (ii) being drunk or under the influence of drugs;
 - (iii) offering or making available to another person his or her services for the purpose of committing an act of indecency in any street or public place;
 - (iv) allowing that premises to which the public has access, to be used for the purpose of any act of indecency;
 - (v) continuing to beg from a person or closely follow a person or continue to force himself or herself on a person for the rendering of any type of service after such person has given a negative response to such begging or offer for services;
 - (vi) playing loud music or the use of music instruments on any premises;
 - (vii) advertise wares or services by means of a megaphone, loudspeaker, or similar device or by insistent shouting, striking of gongs, blowing of horns or ringing of bells;
 - (p) in any street or public place use any abusive or threatening language or making disturbing noises;
 - (q) discharge any fire-arm, airgun or air pistol on any premises except premises or land zoned for agricultural purposes and which does not form part of a general plan for a township.
- (2) (a) In the event of a contravention of section 3(1)(a) to (m) and (o)(iv), the municipality may issue a notice on the owner, occupier or alleged offender to terminate the action or to abate the nuisance created.
- (b) In the event of non-compliance with such order and without prejudice to the municipality's right to prosecute, the municipality may take the necessary steps to remove the cause or source of the nuisance and any costs incurred in connection therewith may be recovered from the person responsible for the nuisance or the owner or occupier of the premises whether or not such owner or occupier is responsible therefore.
- (3) For the application of this by-law, any action or condition on any premises that endangers the safety of a person or property or which is untidy, annoying, troublesome, offensive or disturbing to the peace of other people, shall be considered a public nuisance.

CHAPTER 2

PUBLIC NUISANCES CAUSED BY THE KEEPING OF ANIMALS

4. Duties of owner or keeper of animal

The owner or keeper of an animal –

- (a) may not cause or allow an animal to interfere with the comfort, convenience, peace or quiet of a person;

- (b) must provide such animal with shelter, veterinary care, water and proper food to prevent the animal from causing a public nuisance;
- (c) must maintain the premises and all accompanying appurtenances on which an animal is kept in good repair and in a neat condition in order to prevent the occurrence of a public nuisance;
- (d) must exercise control over his or her animals in order to prevent damage to property or gardens; and
- (e) may not leave or allow any animal to be on any section of a public road or leave such animal in a place from where it may stray onto such section of a public road.

5. Animals kept in unsatisfactory manner

(1) Whenever an animal is kept in an unsatisfactory manner which causes a public nuisance, the municipality may by written notice require the owner or occupier of such premises to remove the cause of and to abate such nuisance or to comply with any condition or instruction imposed in terms of subsection (2).

(2) The municipality may prescribe the steps that need to be taken or the work that must be done, at the cost of the owner or occupier, to comply with the notice contemplated in terms of subsection (1).

(3) If a person fails to comply with a notice issued in terms of sub sections (1) or (2), the municipality may take the steps required to remedy the nuisance and recover the cost thereof from such owner or occupier.

(4) Should the removal of the animal from the premises be required, the municipality may approach a competent court for an order regarding the removal and disposal of the animal..

6. Euthanisation of animals

The municipality may, subject to the provisions of its Pounds By-law, order the euthanisation or destruction of an animal found in or on a public street or public place, and which is –

- (a) dangerous or ferocious to the extent that a person’s life or property is endangered; or
- (b) injured or diseased to the extent that it would be humane to do so.

7. Visibility of structures on premises

All structures in which animals are kept on premises must be suitably screened from any street.

8. Hawking or selling of animals

Subject to the provisions of the municipality’s Informal Trading By-law, no person may hawk or sell an animal in a street or public place or from a movable structure or vehicle.

**CHAPTER 3
PROVISIONS RELATING TO KEEPING OF DOGS**

9. Number of dogs

(1) Subject to the provisions of section 20, no person may, without the permission of the municipality keep more than two doges on any premises

(2) The provisions of sub section (1) shall not apply to premises or land used for bona-fide agricultural purposes.

10. Dogs in streets or public places

(1) Subject to the provisions of the Public Amenities by-law, the owner or keeper of a dog may not bring or allow it in a street or public place unless the dog is on a leash, provided that the municipality may designate places or areas where the owner of keeper of dogs may allow such dog or dogs to be without a leash.

(2) Except in the event of a blind person being lead by a guide dog, a person in charge of a dog in a street or public place, must remove any faeces left by the dog by wrapping it in paper or plastic and disposing of it in a receptacle provided for litter or refuse.

11. Control of dogs

(1) No person may –

- (a) permit a bitch on heat to be in a street or public place without supervision;
- (b) urge a dog to attack, worry or frighten any person or animal unless in self-defence;
- (c) keep a dog if the premises is not adequately fenced to keep such dog inside when it is not on a leash; or
- (d) permit a dog –
 - (i) to trespass on private property;
 - (ii) to constitute a hazard to traffic using any public road;
 - (iii) to constitute source of danger or injury to a person outside the premises on which such dog is kept; or
 - (iv) to be a source of danger to employees of the municipality entering such premises for the purpose of carrying out their duties.
- (e) keep any dog which interferes with the comfort, convenience, peace or quiet of a person by–
 - (i) barking, yelping, howling or whining;
 - (ii) charging any vehicles, animals, poultry, pigeons or persons outside any premises where it is kept; or
 - (iii) by behaving in any other manner.

(2) The municipality may seize and impound a dog which is found in a street or public place in contravention with the provisions of this by-law.

(3) A dog impounded in terms of subsection (2) may be released to the owner upon payment of a fee determined by the municipality.

CHAPTER 4 CO-OPERATION BETWEEN MUNICIPALITIES

12. Service delivery agreements

Whereas the keeping of animals on premises may cause a health nuisance, the municipality may enter into agreements with the district municipality with which legislative and executive powers is shared, in order to achieve optimal service delivery in terms of this by-law,

13. Powers of municipality

If the service delivery referred to in section 11 is impeded by the refusal or omission by the district municipality to execute any of the arrangements envisaged in an agreement in terms of section 11, the municipality may, subject to the principles of

cooperative government as set out in the Constitution of the Republic of South Africa, 1996, proceed to give effect to such arrangement and any expenses incurred by the municipality in giving effect to such an arrangement may be recovered from the district municipality.

CHAPTER 5 GENERAL PROVISIONS

14. Right of entry and inspection

(1) Any duly authorised employee of the municipality is authorised to inspect any premises within the municipal area at a reasonable time in order to determine whether there is compliance with the provisions of this by-law.

(2) When entering premises in terms of subsection (1), the employee must on request by any person, identify him- or herself.

(3) The authorised employee may be accompanied by a person reasonably required to assist in conducting the inspection.

15. Service of documents

(1) Whenever a notice, order, demand or other document is authorised or required to be served on a person in terms of this by-law, it shall be deemed to have been effectively and sufficiently served on such person –

- (a) when it has been delivered to him or her personally;
- (b) when it has been left at his or her place of residence or business in the Republic with a person apparently over the age of sixteen years;
- (c) when it has been posted by registered or certified mail to his or her last known residential or businesses address in the Republic and an acknowledgment of the posting thereof is produced;
- (d) if his address in the Republic is unknown, when it has been served on his or her agent or representative in the Republic in the manner provided by paragraph (a), (b) or (c); or
- (e) if his address and agent in the Republic are unknown, when it has been posted in a conspicuous place on the immovable property (if any) to which it relates.

(2) When any notice, order, demand or other document is authorised or required to be served on a person, it is not necessary to name him or her but it will be sufficient if he or she is described as the owner, occupier or holder of a right.

16. Appeal

A person whose rights are affected by a delegated decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

17. Offences and Penalties

(1) It is an offence to-

- (a) furnish false information to an authorised person in respect of any issue pertaining to this by-law;
- (b) to refuse to co-operate with the request of an authorised person made in terms of this by-law; or

- (c) to hinder or obstruct an authorised person in the execution of his or her duties in terms of this by-law.
- (2) A person who contravenes any of the provisions of sections 3, 4, 5, 8, 9, 10 or 11 of this by-law, or fails to comply with any provision, or fails to comply with a notice issued in terms of any provision of this by-law, commits an offence and shall on conviction be liable to-
 - (a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment and,
 - (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to 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 the court to have been incurred by the municipality as result of such contravention or failure.

18. Exemptions

Notwithstanding the provisions of this by-law, the municipality may exempt any person and class of persons from any or all of these requirements and may impose any other requirements it deems appropriate.

19. Liaison forums in community

- (1) The municipality may establish one or more liaison forums in a community for the purposes of –
 - (a) creating conditions for a local community to participate in the affairs of the municipality; and
 - (b) promoting a safe and healthy environment;
- (2) A liaison forum may consist of –
 - (a) a member or members of an interest group, or an affected person;
 - (b) a designated official or officials of the municipality; and
 - (c) a councillor.
- (3) (a) the municipality may, when considering an application for an approval, or exemption certificate in terms of this by-law, request the input of a liaison forum.
 - (b) a liaison forum or any person or persons contemplated in subsection (2) may, on own initiative submit an input to the municipality for consideration.

20. Transitional provisions

A person who, at the commencement of this by-law, keeps more than two dogs may not replace any dog that dies or is disposed of if it would result in a contravention of section 9(1).

21. Repeal of by-laws

The Saldanha Bay Municipality By-law Relating to the Prevention of Public Nuisances and Nuisances Caused by the Keeping of Animals published in Extraordinary Provincial Gazette No. 7077 dated 24 December 2012 is hereby repealed as a whole.

22. Short title and commencement

This by-law shall be known as the By-law relating to Public Nuisances and shall come into operation on the date of publication thereof in the Provincial Gazette.