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Control of Public Behaviour

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Control of Public Behaviour

Contents

1. General	1
2. Offences	2
3. Definitions	2

eThekweni South Africa

Control of Public Behaviour By-law, 2000

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[Repealed by Nuisances and Behaviour in Public Places on 11 September 2015]

The Durban Transitional Metropolitan Council and the North Central and South Central Local Councils, acting under the authority of section 160 of the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996), hereby publish the following By-laws for the Control of Public Behaviour made by the said Councils at their meeting held on 8 May 2000, which By-laws shall be deemed to have come into effect on—

1. General

- 1.1 Where in the opinion of the Municipality, any Person is in a state of intoxication or under the influence of a Dependence Producing Substance in a Public Place, on Municipal Property or at a Local Facility, the Municipality may Order such Person to leave such Public Place, Municipal Property or Local Facility.
- 1.2 Where in the opinion of the Municipality, any Person is loitering in a Public Place, on Municipal Property or at any Local Facility for the purpose or with the intention of committing an offence, the Municipality may Order such Person to move on to another place.
- 1.3 Whenever any Person in a Public Place, on Municipal Property or in a Local Facility—
 - (1) behaves in a manner which is disorderly, indecent or unseemly;
 - (2) uses threatening, obscene, abusive, violent, offensive or disgusting language or otherwise behaves in a violent or offensive manner;
 - (3) interferes with or molests any other Person;
 - (4) throws anything at any Person or object;
 - (5) associates or acts in concert with other Persons in a manner which causes or is likely to cause a breach of the peace;
 - (6) accosts, insults, jostles, threatens or harasses another Person;
 - (7) begs for money or goods or asks for or solicits anything, whether by gesture, word or otherwise;
 - (8) not intended and lawfully operated for such purposes, Gambles or Wagers other than in accordance with the law;
 - (9) not intended for such purposes, camps or sleeps on or uses any portion thereof for the purpose of habitation, except with the express permission of the Municipality;
 - (10) lies and sleeps on any bench or seat provided for the use of the public;
 - (11) invites another Person to fight, or otherwise
 - (12) causes a Nuisance,the Municipality may Order the Person to cease and desist from such activity.

2. Offences

Where any Person is ordered to do anything or to not to do something and such Person does not comply with such Order, the recipient of any such Order shall be guilty of an offence and liable for a Fine or imprisonment for a period not exceeding six months or to both such Fine and imprisonment.

3. Definitions

Unless inconsistent with the context, the words and phrases in these By-laws shall have the following meanings ascribed to them—

Amusement Facility: Any “Amusement Facility” within the meaning of Item 1 of Schedule 5B of the Constitution but excluding any Casino, Racing Track, Totalisator Depot or other place where Gambling and Wagering is lawfully carried on;

Animal: “Animal” within the meaning of Item 4 of Schedule 4A and Item 7 of Schedule 5B to the Constitution being any member of any species of bird, reptile, amphibian, fish or animal other than homo sapiens;

Animal Pound: Any Premises on which a Pound has been lawfully established for the impounding and detention of Animals;

Beach: The area within the City referred to in Paragraph 3 (21) (c) of Proc 38 of 1996 and Item 33 of Schedule 2 of Proc 80 of 1996;

Boarding House: A Building in or at which the business of providing lodging with meals for reward is conducted for more than four Persons;

Building: Any building or erection of an immovable nature for whatever purpose used including in particular, but without affecting the generality of the foregoing, any tank, Swimming Pool, radio mast (other than a radio mast consisting of a single vertical pole), and any wall or Close Boarded Fence more than 2 m in Height and further includes—

- (1) any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with—
 - (a) the accommodation or convenience of human beings or Animals;
 - (b) the manufacture, processing, storage, display or sale of goods;
- (2) any reservoir or bridge or any other structure connected therewith;
- (3) any petrol pump or any flammable liquids storage tank used in connection therewith;
- (4) any part of a building including a building as defined in paragraph (1), (2) or (3); and
- (5) any consumer installation,

but excludes any open fence, post, pier, ramp, fountain, statue, fish pond, pergola or other garden ornamentation but includes any hut, sack, tent or similar structure or any other form of temporary or permanent dwelling or shelter;

Burgess: An incola of the City;

Caravan: Any Vehicle or similar portable, movable or towable structure including a Trailer and having no foundation other than wheels or jacks and so designed or constructed as to permit human occupation for dwelling or sleeping purposes;

Caravan Park: Any Land upon which three or more Caravans are accommodated or are intended to be accommodated, regardless of whether or not a charge is made for such accommodation, but does not include a site for the sale, display, storage or disposal of Caravans;

Casino: “Casino” within the meaning of Item 5 of Schedule 4A to the Constitution including, without derogating from the generality of the foregoing, any Premises in respect of which a Casino licence is required in terms of the KwaZulu-Natal Gambling Act, 1996 ([Act No. 10 of 1996](#));

Cemetery: A “Cemetery” within the meaning of Item 3 of Schedule 5B to the Constitution which includes, without derogating from the generality of the foregoing, any place for the inhumation of corpses;

Chalet: Any self-contained Dwelling Unit which is part of a Holiday Resort excluding any such unit housing the staff of such Holiday Resort;

Channel includes, without detracting from its general meaning, any open drain, gutter, culvert, canal, watercourse or the like, whether natural or constructed;

City: The areas of jurisdiction of the North Central Local Council and the South Central Local Council;

Clinic: Any institution, Building, facility or place where Persons receive Primary Health Care;

Constitution: The Constitution of the Republic of South Africa, 1996 ([Act No. 108 of 1996](#));

Cremation: The disposal of corpses by burning;

Crematorium: A “crematorium” within the meaning of Item 3 of Schedule 5B to the Constitution being an area or Building set aside for Cremation;

Dependence-Producing Substance: Any substance or any plant from which such substance can be manufactured included in Part 1 of Schedule 2 to the Drugs and Drug Trafficking Act, 1992 ([Act No. 140 of 1992](#));

Durban Transitional Metropolitan Council: The “Transitional Metropolitan Council” established eo nomine under Proclamation LG 123 published in the Official Gazette dated 31 May 1995 and re-established under Proclamations 38 and 80 of 1996 (KZN);

Facility for the Accommodation, Care and Burial of Animals: Any “Facility for the Accommodation, Care and Burial of Animals” within the meaning of Item 4 of Schedule 5B to the Constitution;

Ferry: “Ferry” within the meaning of Item 12 of Schedule 4B to the Constitution;

Fine: A fine of the kind referred to in section 1 (1) of the Adjustment of Fines Act, 1991 ([Act No. 101 of 1991](#));

Funeral Parlour: A “Funeral Parlour” within the meaning of Item 3 of Schedule 5B to the Constitution which includes, without detracting from its usual meaning, any Premises used for or intended to be used for the Preparation of Corpses (whether called an undertakers, a funeral directors, a funeral parlour or by any other appellation), the operation of any hearse, the removal of human remains to such Premises and from such Premises to any Place of Worship and from such Place of Worship or Premises to any Cemetery but excludes any Mortuary;

Gambling: “Gambling” within the meaning of Item 5 of Schedule 4A to the Constitution and “Gamble” shall have a corresponding meaning;

Hazard: Any source of or exposure to danger of Persons, property or the environment;

Holiday Resort: Premises consisting of one or more Chalets and Land upon which three or more Caravans are accommodated, or are intended to be accommodated, regardless of whether or not a charge is made for accommodation;

Hotel: Any Premises which is registered as an “Hotel” under any law;

Jetty: “Jetty” within the meaning, of Item 12 of Schedule 4B to the Constitution;

Land: Any piece of land the external surface boundaries of which are delineated on—

- (1) a General Plan or Diagram registered in terms of the Land Survey Act, 1997 ([Act No. 8 of 1997](#)), or in terms of the Deeds Registries Act, 1937 ([Act No. 47 of 1937](#));

(2) a Sectional Plan registered in terms of the Sectional Titles Act, ([Act No. 95 of 1986](#)); or

(3) a Township Plan in terms of any law of the area previously described as KwaZulu,

or a portion of such land which is not so delineated and includes any such land covered by water and the airspace above such land;

Local Amenity: Any “Local Amenity” within the meaning of Item 11 of Schedule 5B to the Constitution;

Local Facility: Any Local Amenity, Beach, Amusement Facility, Cemetery, Funeral Parlour, Crematorium, Facility for the Accommodation, Care and Burial of Animals, Local Sports Facility, Market, Municipal Park, Municipal Recreation Facility, Pound, Solid Waste Disposal Site, Parking Ground, Parkade, Municipal Clinic, Child Care Facility, Municipal Airport, Ferry, Pontoon, Jetty, Pier, Caravan Park, Hotel, Holiday Resort or Pension;

Local Sports Facility: Any “Local Sports Facility” within the meaning of Item 12 of Schedule 5B 10 the Constitution;

Lodging House: A Building in or upon which the Business of providing lodging without meals for reward is conducted for more than four Persons;

Lost Property Pound: Any Premises on which a Pound has been established under any law for the impounding and detention of movable property (other than Vehicles or Animals) lost, unattended or impounded for evidential reasons in terms of any law;

Market: Any “Market” within the meaning of Item 13 of Schedule 5B to the Constitution;

Mortuary: Any Building where corpses are exposed for identification, autopsies are performed and corpses are temporarily received but excludes a Funeral Parlour;

Motor Vehicle: Any self-propelled Vehicle and includes—

(1) a Trailer; and

(2) a Vehicle having pedals and an engine or an electric motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by means of such pedals, engine, motor, or both such pedals and engine or motor, but does not include—

(a) any Vehicle propelled by electrical power derived from storage batteries and which is controlled by a pedestrian; or

(b) any Vehicle with a mass not exceeding 230 kg and specially designed and constructed and not merely adapted, for the use of any Person

suffering from some physical defect or disability and used solely by such Person;

Municipal Airport: Any “Municipal Airport” within the meaning of Item 7 of Schedule 4B to the Constitution;

Municipal Clinic: A Clinic vested in or operated by or on behalf of the Municipality;

Municipal Council: The Organs of State of the Municipality vested with municipal legislative and executive jurisdiction in respect of the City;

Municipality: The North Central Local Council, South Central Local Council and the Durban Transitional Metropolitan Council and includes any committee or Person delegated by any Municipal Council of any such Municipality or deemed to have been so delegated to exercise any power or carry out any duty of the Municipality;

[Editorial Note: Wording as per original Government Gazette. It is suggested that the word “ower” is intended to be “power”.]

Municipal Park: Any “Municipal Park” within the meaning of Item 15 of Schedule 5B to the Constitution;

Municipal Property includes all immovable property owned by, vesting in, leased by or under the control of the Municipality other than Public Places or immovable property leased from the Municipality by a Person other than a Municipal Service Provider;

Municipal Recreation Facility: Any Municipal Facility for any activity or pastime pursued for the pleasure or interest it gives;

Municipal Road: Any "Municipal Road" within the meaning of Item 15 of Schedule 5B to the Constitution including, without derogating from the generality of the foregoing, any Public Municipal Road, Private Municipal Road or Private Road but excluding any Provincial Road or National Road;

Municipal Service: Any service which the Municipality may provide in terms of any law;

Municipal Service Provider: A Service Provider providing a Municipal Service;

National Legislation: "National legislation" within the meaning of section 239 of the Constitution;

National Road: Any road established as a "national road" under any National Legislation;

North Central Local Council: The "Transitional Local Council" established eo nomine in terms of Proclamations 38 and 80 of 1996;

Nuisance: Any "Public Nuisance" within the meaning of Item 5 of Schedule 5B to the Constitution including, without derogating from the generality of the foregoing, any Hazard or other condition, thing, act or omission which is offensive or injurious or which tends to prejudice the safety, good order, peace or health of the Burgesses of the City or of any part thereof or the rights or reasonable comfort, convenience, peace or quiet of any neighbourhood within the City and includes any act, exhibition or publication contrary to public decency or morals;

Order: When used without qualification means issue a Police Order;

Organ of State: "Organ of State" within the meaning of section 239 of the Constitution;

Parkade: A Building or portion of a Building used, constructed, designed or adapted to be used for the purpose of the Parking of Motor Vehicles for reward but excludes a Building in or Land on which Parking Space is required to be provided in terms of any law as long as the Parking Space provided does not exceed the minimum prescribed in such law by more than 50%;

Parking: "Parking" within the meaning of Item 23 of Schedule 5B to the Constitution including, without derogating from the generality of the foregoing, the keeping of a Vehicle whether occupied or not, stationary for a period of time than is longer than is reasonably necessary for the actual loading or off-loading of Persons or goods or the owning or possessing of any Vehicle so kept but does not include any such keeping of a Vehicle by reason of a cause beyond the control of the Person so keeping such Vehicle;

Parking Ground: Land used, designed, developed or adapted to be used for the purpose of the Parking of Motor Vehicles for reward but excludes Land on which Parking Space is required to be provided in terms of any law as long as the Parking Space provided does not exceed the minimum prescribed in such law by more than 50%;

Parking Space: An area set aside for the Parking of Motor Vehicles;

Pension: Any Boarding House or Lodging House;

Person includes, where applicable, a juristic person;

Pier: "Pier" within the meaning of Item 12 of Schedule 4B to the Constitution;

Place of Worship: Premises or portion of Premises used, constructed, designed or adapted to be used as a church, chapel, oratory, synagogue, mosque, temple, Sunday school or other place of public devotion;

Police Order: A verbal instruction by the Municipality to a Person to do something or refrain from doing something where the failure to comply with such instruction has a criminal sanction;

Pontoon: "Pontoon" within the meaning of Item 12 of Schedule 4B to the Constitution;

Pound: Any “Pound” within the meaning of Item 18 of Schedule 5B to the Constitution including, without derogating from the generality of the foregoing, any Lost Property Pound, Vehicle Pound or Animal Pound;

Premises: Any Building or other structure together with the Land on which it is situated and any adjoining Land occupied or used in connection with any activities carried on in such Building or structure, and includes any Land without any Buildings or other structures;

Preparation of Corpses: Any action aimed at the preparation of a corpse for a funeral, burial or Cremation and includes the embalming of such corpse for the said purposes;

Primary Health Care: Health care of a kind usually provided by a general medical practitioner;

Private Municipal Road: A Road on Municipal Premises;

Private Road: Any Road which is not a Public Road;

Provincial Legislation: “Provincial legislation” within the meaning of section 239 of the Constitution;

Provincial Road: Any road established as a “provincial road” under any Provincial Legislation;

Public Municipal Road: Any Public Place which is a Municipal Road;

Public Place: Any “Public Place” within the meaning of Item 19 of Schedule 5B including, without derogating from the generality of the afore going, any National Road, Provincial Road, Public Municipal Road or any other place in the City—

- (1) which is vested by deed of title in the Municipality for the use and the benefit of the public;
- (2) which, being in the ownership of the Municipality—
 - (a) is specifically established as or declared to be a Public Place in terms of any law by resolution of the Municipality ;
 - (b) to which the public has acquired the right to use;

Public Road: A Road which is a Public Place;

Racing: “Racing” within the meaning of Item 5 of Schedule 4A to the Constitution;

Racing Track: Any area where Racing is conducted or carried on;

Road: A Public Road or Private Road and includes, in addition to the Roadway—

- (a) the Land of which the road consists or over which the Road Reserve in question extends;
- (b) anything on that Land forming part of, connected with, or belonging to the road;
- (c) immovable property acquired for the construction of a connection between a road and another road; and

(d) the Roadside;

Road Drainage Channel: A Channel alongside a Roadway primarily intended to drain Stormwater from such Roadway;

Road Reserve: The full width of a Road and includes the Roadside and the Roadway, in addition to any adjacent Land specifically acquired for the purpose of or as a result of construction;

Roadside: That portion of a Road not forming the Roadway and includes the Verge and any Road Drainage Channel;

Roadway: That portion of a Road improved, constructed or intended for Vehicular Traffic;

Service Provider: An Organ of State or any other Person contracted by the Organ of State to carry out any function of the Organ of State who is not a employee or the Organ of State but includes any employee or agent of such service provider;

Solid Waste: "Solid Waste" within the meaning of Item 20 of Schedule 5B to the Constitution;

Solid Waste Disposal Site: Any site for the disposal of Solid Waste demarcated as such by signage;

South Central Local Council: The "Transitional Local Council" established eo nomine in terms of Proclamations 38 and 80 of 1996;

Stormwater: "Stormwater" within the meaning of Item 13 of Schedule 4A of the Constitution including without derogating from the generality of the foregoing, any rain, surface, subterranean or spring water;

Totalisator Depot: Any shop, office or other Premises used for the purpose of a totalisator agency in terms of any National or Provincial Legislation;

Trailer: A Vehicle which is not self-propelled and which is designed or adapted to be drawn by a Motor Vehicle but does not include a side-car;

Vehicle: A device designed or adapted mainly to travel on wheels or crawler tracks and includes such a device which is connected with a draw-bar to a breakdown vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a Motor Vehicle which is being salvaged other than such a device which moves solely on railway lines;

Vehicle Pound: Any Premises for the impounding and detention of Vehicles established in terms of any law;

Vehicular Traffic: The flow or movement of Vehicles;

Verge: That portion of a Public Road which is not constructed or intended for Vehicular Traffic;

Wagering: "Wagering" within the meaning of Item 5 of Schedule 4A to the Constitution' and "Wager" has a corresponding meaning.