

Swartland, South Africa

Public Nuisances

Legislation as at 12 April 2019

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Swartland South Africa

Public Nuisances By-law, 2019

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

1. Definitions

In this by-bw, the English text shall prevail in the event of In 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;
- (b) to make payments in respect of the property on behalf of the owner; or
- (c) to manage other matters, delegated by the owner, relating to the property.

"**animal**" means any mammal, bird, reptile, fish or insect which is in captivity or under the control of a person, including any of the aforementioned which is kept as a pet.

"**authorised official**" means-

- (a) an employee of the municipality designated to implement and execute the provisions of this by-law;
- (b) a law enforcement officer appointed by the municipality in terms of section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
- (c) a member of the Service as defined in section I of the South African Police Service Act, 1995 (Act 68 of 1995); and
- (d) a member of the Animal Welfare Society or Society for the Prevention of Cruelty to Animals;

"**district municipality**" means the West Coast District Municipality established in terms of section 12 of the Municipal Structures Act, 1998. (Act 117 of 1998);

"**drunk**" means a person who, by voluntary intake of alcohol, which caused impaired control of his or her mental or physical abilities, 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 or causes him or her to pose a danger to anyone;

"**municipality**" means the Swartland Municipality established in terms of section 12 of the Municipal Structures Act, 1998 (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, 2000 (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 object, 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;

"**occupier**" means any person who occupies or has control over any premises;

"**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 premises;
 - (iii) in cases where the person in whose name property is registered is insolvent or deceased, or mentally impaired 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 is described above is absent, the agent of such person; and
 - (v) in any case where the premises is inhibited in terms of a servitude or similar right, the inhabitant of such property;

"**pet**" means a tame domestic animal which is kept for companionship or pleasure;

"**premises**" means-

- (a) land or a portion of and, including a public place, whether or not 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, beach, recreation ground or open space which:A

- (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;

"**responsible authority**" means the West Coast District Municipality or any national or provincial department that may in terms of its powers and functions impose conditions or restrictions in respect of the keeping of animals;

"**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, Act 9 of 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. Objectives and application of by-law

- (1) 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 Swartland municipal area by fostering an environment in which the public in general may enjoy peaceful and harmonious living conditions.
- (2) Sections 4(1), 12(1) and 13(1) do not apply to-
 - (a) premises which are used for bona fide agricultural purposes; or
 - (b) premises identified by the municipality where the keeping of animals or the operation of pet parlours, pet shops or catteries and kennels are permitted and indicated as such in an approved spatial development framework and zoning scheme.
- (3) A person who keeps animals on premises contemplated in subsection (2) is not exempt from the provisions of this by-law relating to the inception or causation of a public nuisance.

BODY

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 or danger 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 object 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 object, which is or may become offensive or dangerous, unless such material or object 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 place 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 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) swim in a public stream, pool, water trough, hydrant or fountain or bathe or wash him- or herself or any animal, article or clothing in a public toilet 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 any intoxicating substance;
 - (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 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) advertising wares or services by means of a megaphone, loudspeaker, or similar device or by insistent shouting or causing noise by whatever means;
 - (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(l)(a) to (m) and (o)(iv) , the municipality may serve 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 therefor.
- (3) For the application of this by-law, any action or condition on any premises that endangers the safety or health 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

KEEPING OF ANIMALS

4. Permission to keep animals

- (1) Subject to section 12, no person may keep or permit to be kept on any premises or property any animal, excluding a pet, without the written permission of the municipality.
- (2) For the purpose of managing the keeping of animals on premise,the municipality may determine the number of bee hives, as well as the kind, number and sex of animals that may be kept and the areas within which the keeping of such animals and bees shall be prohibited.
- (3) In order to consider an application in terms of subsection (I), the municipality may obtain the input or comments of the owners or occupants of surrounding premises.

5. Duties of owner or keeper of animal

- (1) The owner or keeper of an animal-
- (a) may not cause or allow an animal to interfere with the comfort, convenience, peace or safety 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.

- (2) The provisions of section 6 shall apply to an owner or occupier who contravenes any of the provisions of subsection (1).

6. Animals kept in unsatisfactory manner

- (1) Whenever animals kept on any premises are causing a public nuisance or danger to any person, 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 subsection (1) the municipality may take the steps required, including the seizure and impoundment of such animals, and recover the cost thereof from such owner or occupier.
- (4) The seizure and impoundment of animals under this section shall be subject to the provisions of section 19.

7. Euthanasia of animals

- (1) An authorised official may order the euthanasia 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, wellbeing or property is endangered; or
 - (b) injured to the extent that it would be humane to do so or diseased to the extent that it would be a danger to the wellbeing of any person.
- (2) When an animal is to be euthanised or destroyed in terms of subsection (1), it must be done by a registered veterinary surgeon or destroyed with such instruments or appliances and in such a manner as to inflict as little suffering as possible.

8. Visibility of structures on premises

All structures in which animals are kept on premises must be suitably screened so as not to be visible from any street.

9. Hawking or selling of animals

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 DOGS

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 and under full control of the person holding the leash to ensure that the dog does not pose a danger to any person, provided that the municipality may designate places or areas where the owner or keeper of dogs may allow such dog or dogs to be without a leash.

- (2) Except in the event of a blind person being led 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 dog under his or her control 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 are 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, whining or making any noise causing a nuisance
 - (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) An authorised official may, without a warrant, seize a dog which is found on a street or public place in contravention of the provisions of this by-law and impound such dog at a place designated by the municipality.
- (3) A dog impounded in terms of subsection (2) may be released to the owner upon payment of a fee determined by the municipality.

12. Number of dogs

- (1) No person may keep more than two dogs on any premises without the permission of the municipality.
- (2) An application in terms of subsection (1) must be submitted on an application form obtainable from the municipality and must contain an exposition of the breed, gender and number of dogs applied for.
- (3) The restriction in terms of subsection (1) does not apply for a period of 10 weeks after the birth of a litter.

13. Breeder of dogs

- (1) A breeder of dogs who wishes to keep more than two dogs must obtain permission from the municipality.
- (2) An application in terms of subsection (1) must be submitted in the form prescribed by the municipality and must contain an exposition of the race, gender and number of dogs applied for.

- (3) Plans and specifications of structures in which it is proposed to keep the dogs, as well as a site plan indicating all existing or proposed structures and fences on the premises of which the permits is required, must accompany the application in subsection (1) and such plans must be approved by the municipality.

14. Conditions and restrictions

The municipality's consent in terms of section 4(1), 12(1) and 13(1) shall be granted subject to such conditions and restrictions as the municipality, after consultation with another responsible authority, may deem fit to impose.

15. Withdrawal of permission

- (1) Where a person contravenes or fails to adhere to a condition or restriction contemplated in section 14, the municipality may, after hearing that person, withdraw its consent and may order the removal of animals from the premises for care and safekeeping by an animal welfare organisation or pound.
- (2) Any cost incurred by the municipality for the removal and safekeeping of animals contemplated in subsection (1), shall be recoverable from the owner or keeper thereof.

Chapter 4 CO-OPERATION BETWEEN MUNICIPALITIES

16. 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.

17. Powers of municipality

If the service delivery referred to in section 16 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 16, 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 ENFORCEMENT

18. Right of entry and inspection

- (1) An authorised official 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 authorised official must on request by any person, identify him- or herself by producing his or her appointment certificate issued by the municipality.
- (3) An authorised official may be accompanied by a person reasonably required to assist in conducting the inspection.

19. Seizure and impoundment of animals

- (1) An authorised official may-
 - (a) on the authority of a warrant, seize and remove animals from premises where such animals are kept in contravention of the provisions of section 5(1)(a) to (d);
 - (b) without warrant-
 - (i) seize and remove an animal found in the circumstances contemplated in section 5(1)(e); and
 - (ii) seize and remove animals from premises if he or she has reasonable grounds to believe that entry without a warrant is necessary to prevent imminent bodily harm to or the death of any person.

Chapter 6 GENERAL PROVISIONS

20. Serving 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 business 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.

21. Appeal

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefor 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.

22. 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, 9 and 10 to 13, or fails to comply with any such provision, or fails to comply with a condition or 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.

23. 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.

24. 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.

25. Transitional arrangements

- (1) A person who, at the commencement of this by-law, keeps more animals than the number contemplated in any section of this by-law may not replace animals that die or are disposed of and must gradually reduce the number of animals that may be kept.
- (2) Anything done under or in terms of any provision repealed by this by-law shall be deemed to have been done under the corresponding provisions of this by-law and the repeal in section 26 shall not affect the validity of anything done under the by-law so repealed.

26. Repeal of by-laws

The By-law relating to Public Nuisances- Swartland Municipality as published in Provincial Gazette Extraordinary 7402 of 12 June 2015 is hereby repealed in its entirety.

27. 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.