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By-Law to Prevent and Control Public Nuisances

Commences on 3 October 2005 unless otherwise noted

To regulate the prevention and control of public nuisances.

1. Definitions

In this by-law, unless inconsistent with the context:—

"authorised employee" means an official in the employ of the municipality, designated by the Municipal Manager;

"domesticated animal" means an animal such as a dog, cat, fish or rodent, generally regarded as a pet;

"Council" means the council of the municipality;

"heavy vehicle" means any vehicle or trailer with a tare of three tonnes or more;

"implement" means any machinery or equipment, whether selfpropelled or not;

"municipality" means the Municipality of Cape Agulhas;

"person in charge of a premises" means a registered owner of a property or business, an occupier, a manager or acting manager of a business or any other person who derives a benefit from the premises concerned;

"public nuisance" means any act, omission or condition which is offensive, which is injurious or dangerous to health, which materially interferes with the ordinary comfort, convenience, peace or quiet of the public or which adversely affects the safety of the public;

"zoned" means a use right which may be exercised on premises in terms of the provisions of a town planning scheme, and includes any approval which may have been granted in respect of the particular premises in terms of any town planning legislation.

2. Public nuisances prohibited

A person may not cause a public nuisance.

3. Declaration of public nuisances

A public nuisance is created by, but is not limited to—

Animals

- (a) the keeping of animals or reptiles, excluding domesticated animals, on premises unless the premises is in term an applicable town planning scheme zoned as suitable for the keeping of such animals or reptiles;
- (b) the actions or neglect of an owner or person in control of an animal, reptile or domesticated dog, that causes such animal to:—
 - (i) enter upon public or private land other than the premises where it is kept, unless under proper control ar the case of a dog, on a leash;
 - (ii) suffer from an infectious or contagious disease, or
 - (iii) bark, howl, cry or moan incessantly.
- (c) the failure of a person in control of a dog on a street or public land, to remove the droppings of that dog.
- (d) the keeping of pets in a manner that is unhygienic or disturbing.

Poultry and birds

- (e) the keeping of poultry or birds, with the exception of domesticated birds which are kept in cages or lofts, on premises unless the premises is in terms of an applicable town planning scheme zoned as suitable for the

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keeping of poultry or birds;

- (f) the keeping of domesticated birds which are kept in cages or lofts, in a manner that is unhygienic or disturbing.

Parking and servicing of vehicles

- (g) the overnight parking, outside of a garage, of more than one heavy vehicle or boat on premises which is zoned residential purposes;
- (h) the storing, outside of a garage, of an implement on premises which is zoned for residential purposes;
- (i) the repairing, washing, maintenance or servicing of a heavy vehicle, boat or implement, outside of a garage, on premises which is zoned for residential purposes or the washing, maintenance or servicing of a boat in such a way that the excess water pose a health risk;
- (j) the parking of a vehicle, heavy vehicle, boat or trailer on premises in such a manner that a part of the vehicle, heavy vehicle, boat or trailer extends over the boundaries of the premises on which it is parked.

Fireworks

- (k) the letting off of a firework on or over private land in such a manner that the firework or part thereof may land on adjacent premises.

Businesses on residential premises

- (l) legally operating a business or engaging in similar activities on residential premises, notwithstanding any approvals granted by the Council in terms of town planning legislation, to the extent that:
- (i) the limitations and conditions determined by the Council when the application for the activity was originally approved in terms of legislation, are exceeded;
 - (ii) the storage of goods or materials on the premises is unsightly;
 - (iii) the operation of a pump, compressor, fan or similar machinery to the effect that a vibration is caused on other premises in the area;
 - (iv) the use of spray paints or other volatile substances that sprays, smells or gases enter onto other property in the area;
 - (v) the manufacture or activities related to the manufacture of goods or materials is causing a disturbance;
 - (vi) the frequency of deliveries or the calling of persons at the premises is causing a disturbance;
 - (vii) the frequency of loading or unloading of vehicles in the street or on the premises is causing a disturbance;
 - (viii) the gathering of workers on or near the premises is causing a disturbance, or
 - (ix) the frequency of the arrival, departure or parking in the street of vehicles attached to the activities on the premises is causing a disturbance.

Dilapidated land and buildings

- (m) buildings or vacant land that have become:
- (i) so unsightly, offensive or in a state of disrepair that the values of properties in the area are detrimentally affected;
 - (ii) a home for squatters or a shelter for undesirable elements;
 - (iii) overgrown with neglected lawns, trees, shrubs or other cultivated or uncultivated vegetation
 - (iv) inundated with an unsightly accumulation of papers, cartons, garden refuse, rubble and/or other waste materials, or
 - (v) a depository for waste materials.

Businesses

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(n) in relation to business premises—

- (i) the depositing of waste materials emanating from the activities on the premises in a street refuse bin;
- (ii) the depositing of waste materials emanating from the activities on the premises on a part of the premise which is open to the street or sidewalk, unless it is in a container provided or approved by the Council;
- (iii) the display of goods for sale on a part of the premises outside of a building, which is open to the street or sidewalk, but does not form part of the street or the sidewalk;
- (iv) the parking of a vehicle on the premises in such a manner that part of the vehicle extends over a boundary of the premises;
- (v) a means of advertising or promotion on the premises that has a negative impact on persons in the street or the area;
- (vi) a means of advertising or promotion that has the effect that a distraction or danger is caused for passing vehicular or pedestrian traffic, a gathering of persons is allowed to form in the vicinity of the premises, or that pedestrians are prevented from using the sidewalk in front of the premises;
- (vii) a shop trolley attached to the business be moved further away from the business than the nearest parking areas normally utilised by the customers of the business;
- (viii) shop trolleys attached to the business accumulating in a street or parking area to the extent that vehicular or pedestrian traffic is impeded or endangered;
- (ix) a refrigerator, compressor, fan or other machinery, operating in such a manner that a disturbing vibration is caused on adjacent premises;
- (x) an increase in the frequency of deliveries or callers at the premises that other occupiers in the area are prevented from gaining normal access to their premises; and
- (xi) vehicles attached to the business parking in front of other premises in the area to the extent that the occupiers are prevented to proceed with the normal operation of their activities.

Behaviour in streets, public places, etc

(o) In relation to general behaviour on streets, parking bays, parking areas and in public places—

- (i) shouting, screaming, whistling or making any other noise to attract attention to such an extent that a nuisance is created;
- (ii) bringing a vehicle to a stop or driving a vehicle in such a manner that pedestrian and vehicular traffic is impeded;
- (iii) riding bicycles or similar devices in groups in such a manner that pedestrian and vehicular traffic is impeded;
- (iv) pushing or parking trolleys or similar devices in such a manner that pedestrian and vehicular traffic is impeded;
- (v) walking or standing in groups in such a manner that other pedestrian traffic is impeded;
- (vi) offering services or goods and articles for sale in intersections in such a manner that the attention of drivers of vehicles is distracted;
- (vii) offering services or goods or articles for sale from the side of the road in such a manner that vehicular or pedestrian traffic is impeded or the attention of drivers of vehicles is distracted;
- (viii) operating a vehicle drawn by animals at such times when, and on such streets where, a heavy traffic flow is experienced;
- (ix) a person in an inebriated or drug-induced condition, and
- (x) a person acting in a disorderly manner.

Display of offensive material

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- (p) the display of anything which is visually offensive;

Causing radio and television interference

- (q) operating any device which interferes with radio and television reception.

4. Compliance notice

- (1) When an authorised employee finds that any person is contravening a provision of this by-law, or that as a result of the actions or neglect of any person, a condition has arisen that is causing a nuisance or has the potential to cause a nuisance to the public, such employee may issue a compliance notice to such person.
- (2) The notice issued in terms of subsection (1) must state—
 - (a) the provision of the by-law that is being contravened or will be contravened if the condition is allowed to continue;
 - (b) the measures that must be taken to rectify the condition, and
 - (c) the time period in which the notice must be complied with.

5. Application

- (1) The provisions of this by-law do not derogate from the provisions of any other legislation which provides for the control of specific nuisances as defined in that legislation.
- (2) Notwithstanding subsection (1) above, the provisions of any legislation relating to town planning are subject to this bylaw.
- (3) This by-law also binds any organ of state.

6. Transitional arrangements

A person who can prove that an approval was granted in terms of any by-law contained in the schedule, may continue to act in terms of the approval granted in terms of that by-law, provided that:—

- (a) the conditions imposed in terms of the original approval will remain in force;
- (b) the original approval will be valid only in respect of the premises for which it was granted, and
- (c) no approval may be transferred from the original applicant to another person.

7. Offences and Penalties

- (1) A person who contravenes section 2, shall be guilty of an offence and on conviction liable for the payment of a fine.
- (2) A person who fails to comply with a notice served in terms of subsection 4(2) or with any requirement imposed by an authorised employee in the exercise of his or her powers or the performance of his or her duties and functions thereunder shall be guilty of an offence and liable for the payment of a fine.