

**NORTHERN CAPE PROVINCE**

**PROFENSI YA KAPA-BOKONE**



**NOORD-KAAP PROVINSIE**

**IPHONDO LOMNTLA KOLONI**

**EXTRAORDINARY • BUITENGEWONE**

**Provincial Gazette  
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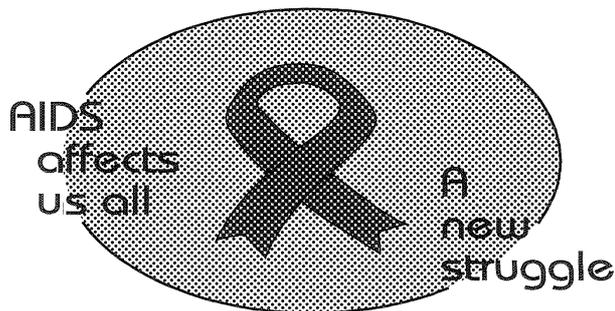
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**We all have the power to prevent AIDS**



**Prevention is the cure**

**AIDS  
HELPLINE**

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**DEPARTMENT OF HEALTH**

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## GENERAL NOTICE

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### NOTICE 47 OF 2013

#### FRANCES BAARD DISTRICT MUNICIPALITY

#### PUBLIC NOTICE: ENACTMENT OF BY-LAWS.

Members of the public are herewith notified in terms of Chapter 4 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) that the municipality has approved the following By-Laws for application in the jurisdiction area of Frances Baard District Municipality: Air quality management; Noise control; Municipal health. The enactment, promulgation and application of these by-laws are mandated in terms of Section 156(2) of the Constitution of the Republic of South Africa, 1996 and in terms of Section 11 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

Members of the public are also herewith notified in terms of Section 13(b) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) that the By-laws take effect on the date of publication thereof in the Provincial Gazette.

Dated and signed in Kimberley on this 06 June 2013



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**MUNICIPAL MANAGER**

**FRANCES BAARD DISTRICT MUNICIPALITY:  
AIR QUALITY MANAGEMENT BY-LAW**

Under section 156 of the Constitution of the Republic of South Africa, 1996 and the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004) the Frances Baard District Municipality, enacts as follows:-

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## PART 1 INTERPRETATION AND OBJECTIVES

### 1. Definitions

In this by-law, unless the context indicates otherwise –

“**adverse effect**” means any actual or potential impact on the environment that impairs, or would impair the environment or any aspect of it to an extent that is more than trivial or insignificant;

“**air pollutant**” means any substance (including but not limited to dust, smoke, fumes and gas) that causes or may cause air pollution;

“**air pollution**” means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

“**air pollution control zone**” means the geographical area to which Part III of the by-law is declared to apply;

“**atmosphere**” means air that is not enclosed by a building, machine, chimney or other such structure;

“**atmospheric emission**” or “**emission**” means energy or substance or combination of substances emanating from a point, non-point or mobile source that results in air pollution;

“**authorised person**” means any person authorised by the municipality to implement any provision of this by-law;

“**best practicable means**” means the most effective measures that can reasonably be taken to prevent, reduce or minimize air pollution, having regard to all relevant factors including, among others, local conditions and circumstances, the likelihood of adverse effects, the current state of technical knowledge and the financial implications relative to the degree of environmental protection expected to be achieved by application or adoption of the measures;

“**chimney**” means any structure or opening of any kind from or through which air pollutants may be emitted;

“**compressed ignition powered vehicle**” means a vehicle powered by an internal combustion, compression ignition, diesel or petrol driven engine;

“**dark smoke**” means in respect of Part VII of this by-law:

- (a) smoke which has a density of 60 Hartridge smoke units or more, provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a density of 66 Hartridge smoke units or more; or
- (b) smoke which has a light absorption co-efficient of more than 2.125 m, provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a light absorption coefficient of more than 2.51 m;

“**dust**” means any solid matter in a fine or disintegrated form which is capable of being dispersed or suspended in the atmosphere;

“**dwelling**” means any building or other structure, or part of a building or structure, used as a dwelling, and any outbuildings ancillary to it, but excludes shacks and informal settlements;

“**environment**” means the surroundings within which humans exist and that are made up of –

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the interrelationships among and between them; and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

“**free acceleration test**” means the method described in section 18(2) employed to determine whether vehicles are being driven or used in contravention of section 15(1);

“**fuel-burning equipment**” means any furnace, boiler, incinerator, or other equipment, including a chimney;

- (a) designed to burn or capable of burning liquid, gas or solid fuel;
- (b) used to dispose of any material or waste by burning; or
- (c) used to subject liquid, gas or solid fuel to any process involving the application of heat;

“**fumes**” means any pungent or toxic vapour, gas, or smoke including but not limited to diesel fumes, spray painting fumes and exhaust fumes.

“**light absorption meter**” means a measuring device that uses a light-sensitive cell or detector to determine the amount of light absorbed by an air pollutant;

“**living organism**” means any biological entity capable of transferring or replicating genetic material, including sterile organisms and viruses;

“**mobile source**” means a single identifiable source of atmospheric emission which does not emanate from a fixed location;

“**municipality**” means the Frances Baard District Municipality and includes any political structure, political office bearer, duly authorised agent thereof, or a service provider fulfilling a responsibility under this by-law assigned to it in terms of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or any other law, as the case may be, 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, agent or employee;

“**municipal manager**” means a person appointed as such by the municipality in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

“**non-point source**” means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source or fixed location, and includes veld, forest and open fires, mining activities, agricultural activities and stockpiles;

“**nuisance**” means an unreasonable interference or likely interference caused by air pollution with:

- (a) the health or well-being of any person or living organism; or
- (b) the use or enjoyment by an owner or occupier of his or her property; .
- (c) the ordinary comfort, convenience, peace or quiet of another person; and
- (d) the natural state of the environment;

“**offensive odours**” means any smell which is considered to be malodorous or a nuisance to a reasonable person;

“**open burning**” means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, and “burning in the open” has a corresponding meaning;

“**operator**” means a person who owns or manages an undertaking, or who controls an operation or process, which emits air pollutants;

“**point source**” means a single identifiable source and fixed location of atmospheric emission, and includes smoke stacks and residential chimneys;

“**proclaimed township**” means any land unit zoned and utilized for residential purposes;

“**person**” means a natural person or a juristic person;

“**premises**” means 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 that building or structure, and includes any land without any buildings or other structures and any locomotive, ship, boat or other vessel which operates or is present within the area under the jurisdiction of the municipality or the precincts of any harbour;

“**public road**” means a road which the public has the right to use;

“**smoke**” means the gases, particulate matter and products of combustion emitted into the atmosphere when material is burned or subjected to heat and includes the soot, grit and gritty particles emitted in smoke;

“**vehicle**” means any motor, car, motor carriage, motor cycle, bus motor lorry or other conveyance propelled wholly or partly by any volatile spirit, steam, gas or oil, or by any means other than human or animal power.

## **2. Application, principles and objectives**

- (1) The purpose and objectives of this by-law is:
  - (a) to give effect to the right contained in section 24 of the Constitution of the Republic of South Africa, 1996 by controlling air pollution within the area of the municipality’s jurisdiction; and
  - (b) to ensure that air pollution is avoided, or where it cannot be altogether avoided, is minimized and remedied.
- (2) The municipality, aware of the Constitutional right of every person to an environment that is not harmful to his or her health or well-being adopts this by-law with the aim of protecting and promoting the health and well-being of all people in the Frances Baard District area by providing, in conjunction with applicable laws, a legal and administrative framework within which the municipality can develop and manage its obligations.
- (3) In the implementation and enforcement of this by-law, the municipality may take into consideration the realities of the Frances Baard District area, the different customs, cultures, circumstances, geographical areas, kinds of property levels of development and conventions and the municipality may use the devices provided for in this by-law, including the application of different norms, standards and guidelines, the granting of exemptions and the utilisation of liaison forums as contemplated in section 34 of this by-law.

## **PART II DUTY OF CARE**

### **3. Duty to take care**

- (1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures:

- (a) to prevent any potential air pollution from occurring; and
  - (b) to mitigate and, as far as reasonably possible, to remedy any air pollution that has occurred.
- (2) The municipality may monitor the impact and effectiveness of the measures taken in terms of subsection (1) and, if necessary, issue instructions to a person contemplated in subsection (1) with regard to specific measures to be undertaken.
- (3) The municipality may direct any person who fails to take the measures required under subsection (1) –
- (a) to investigate, evaluate and assess the impact of specific activities and report thereon;
  - (b) to commence taking effective control measures to abate the air pollution before a given date;
  - (c) to diligently continue with those measures; and
  - (d) to complete the measures before a specified reasonable date.
- (4) Should a person fail to comply, or inadequately comply, with a directive under subsection (3), the municipality may take reasonable measures to remedy the situation.
- (5) If any person fails to take the measures required of him or her under subsection (1) or (2), the municipality may recover all reasonable costs incurred as a result of it acting under subsection (4) from any or all of the following persons –
- (a) any person who is or was responsible for, or who directly or indirectly contributed to, the air pollution or the potential air pollution;
  - (b) the owner of the land at the time when the air pollution or the potential for air pollution occurred, or that owner's successor in title;
  - (c) the person in control of the land or any person who has or had a right to use the land at the time when –
    - (i) the activity or the process in question is or was performed or undertaken; or
    - (ii) the situation came about; or
  - (d) any person who negligently failed to prevent –
    - (i) the activity or the process being performed or undertaken; or
    - (ii) the situation from coming about.
- (6) If more than one person is liable under subsection (5), the liability may be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsection (1), (2) and (3);

### PART III AIR POLLUTION CONTROL ZONE

#### 4. Declaration of air pollution control zone

- (1) The whole area within the jurisdiction of the municipality is hereby declared an air pollution control zone.
- (2) Within an air pollution control zone the municipality may from time to time by notice in the Provincial Gazette:
  - (a) prohibit or restrict the emission of one or more air pollutants from all premises or certain premises;
  - (b) prohibit or restrict the combustion of certain types of fuel;

- (c) prescribe different requirements in an air pollution control zone relating to air quality in respect of:
  - (i) different geographical portions;
  - (ii) specified premises;
  - (iii) classes of premises; or
  - (iv) premises used for specified purposes.
- (3) The municipality may develop and publish policies and guidelines, including technical guidelines, relating to the regulation of activities which directly and indirectly cause air pollution within an air pollution control zone.
- (4) Subject to section 29, the municipality may in writing exempt certain premises, classes of premises or premises used for specified purposes from the operation of measures adopted by the municipality under this section.

#### **PART IV**

### **SMOKE EMISSIONS FROM PREMISES OTHER THAN DWELLINGS**

#### **5. Application**

For the purposes of this Part, “premises” does not include dwellings.

#### **6. Prohibition**

- (1) Subject to subsection (2), smoke must not be emitted from any premises for an aggregate period exceeding three minutes during any continuous period of thirty minutes.
- (2) This section does not apply to smoke which is emitted from fuel-burning equipment which occurs while the equipment is being started or while the equipment is being overhauled or repaired, or awaiting overhaul or repair, unless such emission could have been prevented using the best practicable means available.
- (3) If smoke is emitted in contravention of subsection (1) the owner, operator and/or the occupier of the premises shall be guilty of an offence.

#### **7. Installation of fuel-burning equipment**

- (1) No person shall install, alter, extend or replace any fuel-burning equipment on any premises without the prior written authorization of the municipality, which may only be given after consideration of the relevant plans and specifications.
- (2) Any fuel-burning equipment installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved, for the purposes of this section, by the municipality shall be presumed until the contrary is proved to comply with the provisions of subsection (1).
- (3) Where fuel-burning equipment has been installed, altered, extended or replaced on premises in contravention of subsection (1):
  - (a) the owner and occupier of the premises and the installer of the fuel-burning equipment shall be guilty of an offence;
  - (b) the municipality may, on written notice to the owner and occupier of the premises, order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.

**8. Operation of fuel-burning equipment**

- (1) No person shall use or operate any fuel-burning equipment on any premises contrary to the authorization referred to in section 7.
- (2) Where fuel-burning equipment has been used or operated on the premises in contravention of subsection (1):
  - (a) the owner and occupier of the premises and the operator of the fuel-burning equipment shall each be guilty of an offence;
  - (b) The municipality may on written notice to the owner and occupier of the premises:
    - (i) revoke its authorization under section 7; and
    - (ii) order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.

**9. Presumption**

In any prosecution for an offence under section 6 smoke shall be presumed to have been emitted from premises if it is shown that any fuel or material was burned on the premises and the circumstances were such that the burning would be reasonably likely to give rise to the emission of smoke, unless the owner, occupier or operator, as the case may be, shows that no smoke was emitted.

**10. Installation and operation of measuring equipment**

An authorised person may give notice to any operator of fuel-burning equipment or any owner or occupier of premises on which fuel-burning equipment is used or operated, or intended to be used or operated, to install, maintain and operate measuring equipment at his or her own cost; if:

- (a) unauthorised and unlawful emissions of smoke from the relevant premises have occurred consistently or regularly;
- (b) fuel-burning equipment has been or is intended to be installed on the relevant premises which is reasonably likely in the opinion of an authorised person to emit smoke;
- (c) the person on whom the notice is served has been convicted more than once under this Part IV and has not taken adequate measures to prevent further contravention of the provisions of this Part; or
- (d) the authorised person considers that the nature of the air pollutants emitted from the relevant premises is reasonably likely to create a hazard or nuisance to human health or the environment.

**11. Monitoring and sampling**

- (1) An occupier or owner of premises, and the operator of any fuel-burning equipment, who is required to install air pollution measuring equipment in terms of section 10(1) must:
  - (a) record all monitoring and sampling results and maintain a copy of this record for at least four years after obtaining the results;
  - (b) if requested to do so by an authorised person, produce the record of the monitoring and sampling results for inspection;
  - (c) if requested to do so by an authorised person, provide a written report (in a form and by a date specified by the authorised person) of part or all of the information in the record of the monitoring and sampling results; and
  - (d) ensure that the air pollution measuring equipment is calibrated at least once per year or at intervals as specified by the manufacturer of the

equipment and provide records of such calibration on request by the authorised person.

**12. Exemption**

- (1) Subject to section 26 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the municipality may grant a temporary exemption in writing from one or all the provisions of this Part.
- (2) Any exemption granted under subsection (1) must state at least the following:
  - (a) a description of the fuel-burning equipment and the premises on which it is used or operated;
  - (b) the reasons for granting the exemption;
  - (c) the condition attached to the exemption, if any;
  - (d) the period for which the exemption has been granted; and
  - (e) any other relevant information.

**PART V  
SMOKE EMISSIONS FROM DWELLINGS**

**13. Smoke emissions from dwellings**

- (1) Subject to section 4(2), no person shall emit or permit the emission of smoke from any dwelling that may cause a nuisance.
- (2) Any person who emits or permits the emission of smoke in contravention of subsection (1) commits an offence.
- (3) Subject to section 26 and on application in writing by the owner or occupier of any dwelling, the municipality may grant temporary exemption in writing from one or all of the provisions of this Part.

**PART VI  
EMISSIONS CAUSED BY OPEN BURNING**

**14. Emissions caused by open burning**

- (1) Subject to subsection (4), any person who carries out open burning of any material on any land or premises is guilty of an offence, unless the prior written authorization of the municipality, which may include the imposition of further conditions with which the person requesting authorization must comply, has been obtained.
- (2) The municipality may not authorize open burning under subsection (1) unless it is satisfied that:
  - (a) the applicant in terms of subsection (1) has investigated and assessed every reasonable alternative for reducing, re-using or recycling the material in order to minimize the amount of material to be burnt in the open, to the satisfaction of the municipality;
  - (b) no warning has been published for the region in terms of section 10(1)(b) of the National Veld and Forest Fire Act, 1998 (Act 101 of 1998);
  - (c) the open burning will not pose a nuisance or potential hazard to human health or safety, private property or the environment; and
  - (d) the prescribed fee has been paid to the municipality.
- (3) Any person who undertakes or permits to be undertaken open burning in contravention of subsection (1) commits an offence.

- (4) The provisions of this section shall not apply to:
- (a) recreational outdoor barbecue or braai activities on private premises;
  - (b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes; or
  - (c) any other defined area or defined activity to which the municipality has declared this section not to apply.

## PART VII

### EMISSIONS FROM COMPRESSED IGNITION POWERED VEHICLES

#### 15. Prohibition

- (1) No person may drive or use, or cause to be driven or used, a compressed ignition powered vehicle that emits dark smoke.
- (2) If dark smoke is emitted in contravention of subsection (1) the owner and the driver of the vehicle shall each be guilty of an offence.
- (3) For purposes of this section the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven.

#### 16. Stopping of vehicles for inspection and testing

- (1) In order to enable an authorised person to enforce the provisions of this Part, the driver of a vehicle must comply with any reasonable direction given by an authorised person:
  - (a) to stop the vehicle; and
  - (b) to facilitate the inspection or testing of the vehicle.
- (2) Failure to comply with a direction given under subsection (1) is an offence.
- (3) When a vehicle has stopped in compliance with a direction given under subsection (1), the authorised person may:
  - (a) inspect and test the vehicle at the roadside, in which case inspection and testing must be carried out:
    - (i) at or as near as practicable to the place where the direction to stop the vehicle is given; and
    - (ii) as soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction; or
  - (b) conduct a visual inspection of the vehicle and, if the authorised person reasonably believes that an offence has been committed under section 15(2), instruct the driver of the vehicle, who is presumed to be the owner of the vehicle unless he or she produces evidence to the contrary, in writing to take the vehicle to a testing station, within a specified period of time, for inspection and testing in accordance with section 17.

#### 17. Testing procedure

- (1) An authorised person must use the free acceleration test method in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of section 15(1).
- (2) The following procedure must be adhered to in order to conduct a free acceleration test:
  - (a) when instructed to do so by the authorised person, the driver must start the vehicle, place it in neutral gear, engage the clutch and disengage the exhaust brake;

- (b) the authorised person or the driver of the vehicle must in less than one second smoothly and completely depress the accelerator throttle pedal of the vehicle;
  - (c) while the throttle pedal is depressed, the authorised person must measure the smoke emitted from the vehicle's emission system with a Hartridge Smoke meter in order to determine whether or not it is dark smoke; and
  - (d) the authorised person or the driver of the vehicle may only release the throttle pedal of the vehicle, when directed to do so by the authorised person.
- (3) If, having conducted the free acceleration test, the authorised person is satisfied that the vehicle:
- (a) is not emitting dark smoke, then the authorised person must furnish the driver of the vehicle with a certificate indicating that the vehicle is not being driven or used in contravention of section 15(1); or
  - (b) is emitting dark smoke, the authorised person must issue the driver of the vehicle with:
    - (i) a notice to pay a fine in terms of section 341 of the Criminal Procedure Act, Act 51 of 1977; or
    - (ii) a repair notice in accordance with section 18.

**18. Repair notice**

- (1) A repair notice must direct the owner of the vehicle to take the vehicle to a place identified in the notice for re-testing.
- (2) The repair notice must contain the following information:
  - (a) the make, model and registration number of the vehicle;
  - (b) the name, address and identity number of the driver of the vehicle; and, if the driver is not the owner, the name and address of the vehicle owner;
  - (d) the measures required to remedy the situation; and
  - (d) the time period within which the owner of the vehicle must comply with the repair notice.
- (3) A person who fails to comply with the requirements and conditions of the notice in terms of sub section (1) commits an offence.
- (4) It shall not be a defence in proceedings under subsection (3) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

**PART VIII  
EMISSIONS THAT CAUSE A NUISANCE**

**19. Prohibition**

- (1) No person may create or permit emissions that cause a nuisance.
- (2) Any person who contravenes subsection (1) commits an offence.

**20. Compliance notice**

- (1) An authorised person may serve a notice on any person whom he or she reasonably believes is likely to commit or has committed an offence under section 19, calling upon that person;
  - (a) to abate the nuisance within a period specified in the notice;
  - (b) to take all necessary steps to prevent a recurrence of the nuisance; and
  - (c) to comply with any other conditions contained in the notice.

- (2) For the purposes of subsection (1), an authorised person may form a reasonable belief based on his or her own experience that an air pollutant was emitted from premises occupied or owned by the person on whom the compliance notice is to be served.
- (3) A compliance notice under subsection (1) may be served:
  - (a) upon the owner of any premises, by:
    - (i) delivering it to the owner, or if the owner cannot be traced or is living abroad that person's agent;
    - (ii) transmitting it by registered post to the owner's last known address, or the last known address of the agent; or
    - (iii) delivering it to the address where the premises are situated, if the owner's address and the address of the agent are unknown;
  - (b) upon the occupier of the premises, by:
    - (i) delivering it to the occupier;
    - (ii) transmitting it by registered post to the occupier at the address at which the premises are situated.
- (4) Any person who fails to comply with a compliance notice served on that person in terms of subsection (1) commits an offence.
- (5) In addition to any other penalty that may be imposed, a court may order a person convicted of an offence under subsection (4) to take steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

#### **21. Steps to abate nuisance**

At any time, the municipality may at its own cost take whatever steps it considers necessary in order to remedy the harm caused by the nuisance and prevent a recurrence of it, and may recover the reasonable costs so incurred from the person responsible for causing the nuisance.

### **PART IX OFFENSIVE ODOURS**

#### **22. Control of offensive odours**

- (1) The occupier or owner of any premises must take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises.
- (2) Any person who emits or permits the emission of any offensive odour in contravention of subsection (1) commits an offence.

### **PART X DUST NUISANCE**

#### **23. Control of dust**

- (1) The occupier or owner of any premises must take all reasonable steps to prevent the creation of nuisance by dust caused by any activity on such premises.
- (2) Any person who emits or permits the emission of dust in contravention of subsection (1) commits an offence.

## PART XI FUME NUISANCE

### 24. Control of fumes

- (1) The occupier or owner of any premises must take all reasonable steps to prevent the nuisance by fumes caused by any activity on such premises.
- (2) Any person who emits or permits the emission of fumes in contravention of subsection (1) commits an offence.

## PART XII PESTICIDE SPRAYING EMISSIONS

### 25. Pesticide Spraying Emissions

- (1) No person may carry out or permit the spraying of pesticides, except as permitted by section 3 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (2) Any person who contravenes subsection (1) of this by-law is guilty of an offence, as set out in section 18(1)(c) of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (3) A person who carries out or permits the spraying of pesticides, within the municipal jurisdiction, must also comply with the following controlled measures:
  - (a) the prior written authorisation of the municipality must be obtained, which authorisation may be granted by the municipality with conditions, including-
    - (i) the area of land on which the pesticide may be applied; and
    - (ii) the period of time in which the pesticide may be applied.
  - (b) the applicant must notify in writing the owners and occupiers of all adjacent properties within 150 metres of the treatment area of:
    - (i) the details of the proposed treatment area;
    - (ii) the reason for the pesticide use;
    - (iii) the active ingredient;
    - (iv) the date and approximate time of the pesticide use;
    - (v) in the event of inclement weather conditions, an alternative date or dates on which the pesticide use may occur;
    - (vi) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application;
    - (vii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed spraying of pesticides with the municipality within seven days of being notified; and
    - (viii) the prescribed fee has been paid to the municipality.
- (4) Any person who contravenes subsection (3) is guilty of an offence.
- (5) A person may apply to the municipality for an exemption if the spraying of the pesticide is for:
  - (a) the management of pests that transmit human diseases or adversely impact agriculture or forestry;
  - (b) the management of pests that threaten the integrity of sensitive

- ecosystems; or
- (c) the need for the use of the pesticide is urgent.
- (6) The provisions of this section are not applicable to:
- (a) residential areas of farms;
  - (b) buildings or inside buildings;
  - (c) domestic use of pesticides; or
  - (d) any other defined area or defined activity to which the municipality has declared this section not to apply.

### PART XIII GENERAL PROVISIONS

#### 26 Appeal

- (1) A person whose rights are affected by a decision delegated by 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.
- (2) Pending confirmation, variation or revocation of the decision against which the appeal is lodged, any person appealing the said decision, unless the municipality provides otherwise:
  - (a) must nonetheless substantively comply with any obligations that may have been imposed as a result of the decision that is the subject of the appeal; and
  - (b) may not exercise any rights that may have accrued as a result of the decision that is the subject of the appeal application, provided that no other person may exercise any right that may accrue either.

#### 27. Municipality and State bound

This by-law is binding on the State and the municipality.

#### 28. Conflict

- (1) In the event of a conflict within any other by-law which directly or indirectly regulates air pollution, the provisions of this by-law shall prevail.
- (2) In the event of a conflict with the Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965) and the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004) the provisions of these Acts will prevail within the area of jurisdiction of the Municipality.

#### 29. Offences and penalties

- (1) Any person who contravenes any provision of this by-law commits an offence and shall, upon conviction, be liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

- (2) It is an offence to:
  - (a) supply false information to an authorised person in respect of any issue pertaining to the by-law, or;
  - (b) to refuse to co-operate with the request of an authorised person made in terms of this by-law.
- (3) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.
- (4) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this by-law:
  - (a) to remedy the harm caused;
  - (b) to pay damages for harm caused to another person or to property, which order shall have the force and effect of a civil judgment; and
  - (c) to install and operate at the person's own expense air pollution measuring equipment in accordance with the provisions of section 11.

### **30. Exemptions**

- (1) The municipality may grant temporary exemption in writing from one or all of the provisions of Parts III, IV and V, provided that the municipality:
  - (a) is satisfied that granting the exemption will not significantly prejudice the purpose referred to in section 2(1); and
  - (b) grants any exemption subject to conditions that promote the attainment of the purpose referred to in section 2(1).
- (2) The municipality may not grant an exemption under subsection (1) until the municipality has:
  - (a) taken reasonable measures to ensure that all persons whose rights may be significantly detrimentally effected by the granting of the exemption, including but not limited to adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
  - (b) provided such person with a reasonable opportunity to object to the application; and
  - (c) duly considered and taken into account any objections raised.

### **31. Savings**

Anything done or deemed to have been done under any other law remains valid to the extent that it is consistent with this by-law or until anything done under this by-law overrides it.

### **32. Repeal of by-laws**

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this by-law.

### **33. Short title and commencement**

This by-law shall be known as the Air Quality Management By-law of the Frances Baard District Municipality and comes into operation on the date of publication thereof in the Provincial Gazette.

**FRANCES BAARD DISTRICT MUNICIPALITY:  
NOISE CONTROL BY-LAW**

Under the powers conferred by section 156(2) of the Constitution of the Republic of South Africa, 1996 the Frances Baard District Municipality enacts as follows –

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**PART I: INTERPRETATION AND OBJECTIVES****1. Definitions**

In these by-laws any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned to it and, unless the context otherwise indicates –

“**Act**” means the Environment Conservation Act, 1989 (Act No. 73 of 1989);

“**ambient sound level**” means the reading on an integrating impulse sound level meter taken at a measuring point, in the absence of any alleged disturbing noise, at the end of a total period of at least 10 minutes after such meter was put into operation;

“**animal**” also includes birds and poultry;

“**controlled area**” means a piece of land designed by a municipality where, in the case of –

- (a) road traffic noise in the vicinity of a road -
  - (i) the reading on an integrating impulse sound level meter, taken outdoors at the end of a period of 24 hours while such meter was in operation, exceeds 60 dBA; or
  - (ii) the outdoor equivalent continuous “A”-weighed sound pressure level at a height of at least 1,2 metres, but not more than 1,4 metres, above the ground for a period of 24 hours as calculated in accordance with SANS 10210, and projected for a period of 15 years following the date

- on which the municipality has made such designation, exceeds 60 dBA.
- (b) air traffic noise in the vicinity of an airfield, the calculated noisiness index, projected for a period of 15 years following the date on which the municipality made such designation, exceeds 65 dBA;
  - (c) industrial noise in the vicinity of an industry –
    - (i) the reading on an integrating sound level meter, set on impulse or faster acquisition rate, taken outdoors at the end of a period of 24 hours while such meter was in operation, exceeds 60 dBA; or
    - (ii) the calculated outdoor equivalent continuous “A”-weighted sound pressure level at a height of at least 1,2 metres, but not more than 1,4 metres, above the ground for a period of 24 hours, exceeds 60 dBA, or
  - (d) noise from any other source in the vicinity of that source -
    - (i) the reading on an integrating sound level meter, set on impulse or faster acquisition rate, taken outdoors at the end of a period extending from the time when such source of noise became active until the time when it was no longer active, while such meter was in operation, exceeds 65 dBA; or
    - (ii) the outdoor equivalent continuous “A”-weighted sound pressure level at a height of at least 1,2 metres, but not more than 1,4 metres, above the ground, as calculated in accordance with acceptable mathematical/acoustic methods for a period extending from the time when the source of noise became active until the time when it was no longer active, and projected for a period of 15 years following the date on which the municipality made such designation, exceeds 65 dBA: Provided that methods of calculation as described in SABS ARP 020 may be used for the calculation.

“**dBA**” means the value of the sound pressure level in decibels, determined using a frequency-weighting network A, and derived from the following equation:

$$L_{PA} = 10 \log_{10} \left[ \frac{P_A}{P_0} \right]^2$$

where –

$P_A$  – the ‘A’-weighted sound pressure; and

$P_0$  – the reference sound pressure

( $P_0 = 20\mu\text{Pa}$ )

“**disturbing noise**” means a noise level that causes the ambient sound level to rise above the designated sound level, or if no sound level has been designated, a sound level that exceeds the ambient sound level by 7 dBA or more or that exceeds the typical rating levels for ambient noise in districts, indicated in table 2 of SANS 10103;

“**erect**” also means alter, convert, extend or re-erect;

“**exempted vehicle**” means a vehicle listed in Annexure A to SANS 10281;

“**integrating sound level meter**” means a device that integrates a function of the root mean square value of sound pressure over a period of time and indicates the result in dBA;

“**integrating impulse sound level meter**” means an integrating sound level meter set on “I”-time weighting or at a sampling rate greater than “I” weighting and integrated to provide the result in dBA;

**“measuring point”** relating to –

- (a) a piece of land from which an alleged disturbing noise emanates, means a point outside the property projection plane where an alleged disturbing noise shall be measured in accordance with the provisions of section 16;
- (b) a building with more than one occupant, means a point in or outside the building where an alleged disturbing noise shall be measured in accordance with the provisions of regulation 16; and
- (c) a stationary vehicle, means a point as described in SANS 10181 where a measuring microphone shall be placed;

**“municipality”** means the Frances Baard 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;

**“noise control officer”** means a person with a qualification equivalent to a senior certificate plus three years tertiary education in engineering, physical sciences or health sciences and who is registered with a professional council;

**“noise level”** means the reading on an integrating impulse sound level meter taken at a measuring point in the presence of any alleged disturbing noise at the end of a total period of at least 10 minutes after such meter was put into operation, and, if the alleged disturbing noise has a clearly discernible pitch, for example, a whistle, buzz, drone or music;

**“noise nuisance”** means any sound which disturbs or impairs or may disturb or impair the convenience or peace of any person;

**“noisiness index”** means a number expressed in dBA as defined in SANS 10117;

**“non-exempted vehicle”** means a vehicle not listed in Annexure A to SANS 10281;

**“plant”** means a refrigeration machine, air conditioners, fan system, compressor, power generator or pump or mechanical driven device;

**“property projection plane”** means a vertical plane on, and including the boundary line of a piece of land defining the boundaries of such piece of land in space;

**“recreational vehicle”** means –

- (a) an off-road vehicle, scrambler, dune buggy or ultra-light aircraft;
- (b) a model aircraft, vessel or vehicle;
- (c) any aircraft or helicopter used for sport or recreational purposes;
- (d) a vessel used on water; or
- (e) any other vessel or model which is used for sport or recreational purposes;

**“SABS 0103”** (now SANS 10103) means South African Bureau of Standards publication No.10103 entitled: “The measurement and rating of environmental noise with respect to annoyance and to speech communication” published under Government Notice No. 718 in Government Gazette No. 18022 of 30 May 1997, as amended from time to time or its corresponding replacement;

**“SANS 10117”** means South African Bureau of Standards publication No. 0117 – 1974 titled: “Code of Practice for the determination and limitation of disturbance around an aerodrome due to noise from aeroplanes” published under Government Notice No. 151 of 01 February 1985, as amended from time to time or its corresponding replacement;

**“SANS 10181”** means South African Bureau of Standards publication No. 0181 – 1981 titled: “Code of Practice for the measurement of noise emitted by road vehicles when stationary” published under General Notice No. 463 of 09 July 1982, as amended from time to time or its corresponding replacement;

“**SABS 0210**” means South African Bureau of Standards publication No. 0210 – 1986 titled: “Code of Practice for calculating and predicting road traffic noise” published under Government Notice No. 358 of 20 February 1987, as amended from time to time or its corresponding replacement;

“**SANS 10281**” means South African Bureau of Standards publication No. 0281 – 1997 titled: “Engine speed (S values), reference sound levels and permissible sound levels of stationary road vehicles” published under Government Notices 761, 762 and 763 in Government Gazette No. 18040 of 06 June 1997, as amended from time to time or its corresponding replacement;

“**sound level**” means the reading on a sound level meter taken at a measuring point at the end of the measurement period;

“**sound level meter**” means a device measuring sound pressure while it is set on “F”-time weighting or at a sampling rate greater than “I” weighting and integrated to provide the result in dBA; and

“**zone sound level**” means a derived dBA value determined indirectly by means of a series of measurements, calculations or table readings and designated by a municipality for an area.

## **2. Principles and objectives**

(1) The municipality, aware of the Constitutional right of every person to an environment that is not harmful to his or her health or well-being adopts this by-law with the aim of protecting and promoting the health and well-being of all people in the Frances Baard District area by providing, in conjunction with applicable laws, a legal and administrative framework within which the municipality can develop and manage its obligations.

(2) In the implementation and enforcement of this by-law, the municipality may take into consideration the realities of the Frances Baard District area, the different customs, cultures, circumstances, geographical areas, kinds of property levels of development and conventions and the municipality may use the devices provided for in this by-law, including the application of different norms, standards and guidelines and the granting of exemptions.

## **3. Authentication and service of notices and other documents**

(1) A notice issued by the municipality in terms of this by-law is deemed to be duly issued if it is signed by the noise control officer.

(2) Any notice or other document that is served on a person in terms of this by-law is regarded as having been duly served –

- (a) when it has been delivered to that person personally;
- (b) when it has been left at that person’s place of residence or business in the Republic with a person apparently over the age of 16 years;
- (c) when it has been posted by registered or certified mail to that person’s last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained;
- (d) if that person’s address in the Republic is unknown, when it has been served on that person’s agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
- (e) if that person’s address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or business premises to which it relates;

- (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate;  
or
  - (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (3) Service of a copy is deemed to be service of the original.
- (4) When any notice or other document is served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.

#### **4. Interdict**

- (1) Any person who feels aggrieved by any contravention of or any failure to comply with any provision of any by-law, shall have the legal capacity to apply to any competent court of law for an interdict in connection with the contravention or failure to comply.
- (2) Any interdict referred to in subsection (1) may, in addition to being applied for against the occupier of any premises, also be applied for against any absent owner thereof.

### **PART II: NOISE POLLUTION MANAGEMENT**

#### **5. Prohibition of Disturbing Noise**

No person may make, produce or cause a disturbing noise, or allow it to be made, produced or caused by any person, animal, machine, device or apparatus or any combination thereof.

#### **6. Prohibition of Noise Nuisance**

No person may –

- (a) operate or play, or allow to be operated or played, a radio, television set, drum, musical instrument, sound amplifier, loudspeaker system or similar device producing, reproducing or amplifying sound so as to cause a noise nuisance;
- (b) offer any article for sale by shouting, ringing a bell or making other sounds or by allowing it to be done in a manner which causes a noise nuisance;
- (c) allow an animal owned or controlled by him or her to cause a noise nuisance;
- (d) build, make, construct, repair, rebuild, modify, operate or test a vehicle, vessel, aircraft or object on or near residential premises, or allow, such actions if it cause a noise nuisance;
- (e) use or discharge any explosive, fireworks, firearm or similar device that emits sounds and may cause a noise nuisance, or allow such actions, except with the prior consent in writing of the municipality concerned and subject to such condition as the municipality may deem necessary;
- (f) on a piece of land or in water or in airspace above that piece of land designated by a municipality by means of a notice in the press –
  - (i) move about on or in a recreational vehicle; or
  - (ii) exercise control over a recreational vehicle; or
  - (iii) as the owner or person in control of the piece of land, water or airspace, allow such activity to take place,  
if this cause a noise nuisance;

- (g) except in an emergency, emit a sound, or allow a sound to be emitted, by means of a bell, carillon, siren, hooter, static alarm, whistle, loudspeaker or similar device, if it cause a noise nuisance;
- (h) operate any machinery, saw, sander, drill, grinder, lawnmower, power tool or similar device or allow it to be operated in a residential area during the following hours:
  - (i) Before 06:00 and after 18:00 from Monday to Saturday; and
  - (ii) before 08:00 and after 14:00 on a Sunday; orif it causes a noise nuisance or noise disturbance.
- (i) load, unload, open, shut or in any other way handle a crate, box, container, building material, rubbish container or any other article, or allow such actions, if it causes a noise nuisance;
- (j) use any power tool or power equipment for construction work, drilling work or demolition work, or allow it to be used in or near a residential area during the following hours:
  - (i) Before 06:00 and after 18:00 from Monday to Saturday; and
  - (ii) before 08:00 and after 14:00 on a Sunday, orif it causes a noise nuisance or noise disturbance.

## 7. Land Use

- (1) No person may –
  - (a) establish a new township unless the lay-out plans concerned, if required by the municipality, indicate in accordance with the specifications of the municipality the existing and future sources of noise, with related dBA values, which are foreseen in the township for a period of 15 years following the date on which the erection of the buildings in and around the township commence;
  - (b) make changes to existing facilities or existing uses of land or buildings or erect new buildings, including, but not limited to places of entertainment, sports bars, discotheques or any place where amplified sound is used, if these will house or cause activities, that will, after such changes or erection, cause a disturbing noise, unless precautionary measures to prevent the disturbing noises have been taken to the satisfaction of the municipality;
  - (c) build a road or change an existing road, or alter the speed limit on a road, if this will cause an increase in noise in or near residential areas, or office, church, hospital or educational buildings, unless the need for noise control measures have been properly determined by the municipality in consultation with the authority concerned to ensure that the land in the vicinity of such roads will not be designated as a controlled area;
  - (d) install, replace or modify a plant with a total input power exceeding 10 kilowatts on any premises, unless the municipality has been notified by the owner of the plant in writing at least 14 days before such installation, replacement or modification of –
    - (i) the particulars of the plant;
    - (ii) the number, street address and title deed description of the premises concerned; and
    - (iii) the date on which the installation, replacement or modification shall commence,provided that if an existing plant had to be replaced by necessity without preceding notification to the municipality, the municipality

must be notified thereof by the owner of the plant in writing within 14 days after the replacement of the plant.

- (2) The municipality may -
- (a) before commencement with any action as contemplated in subsection (1)(b), require that noise impact assessments or tests be conducted by the owner, developer, tenant or occupant of the facilities, land or buildings and that reports or certificates relating to the noise impact be submitted;
  - (b) if excavation work, earthmoving work, pumping work, drilling work, construction work, or demolition work or any similar activity, power generation or music causes or may cause a noise nuisance or a disturbing noise, instruct in writing that such work, activity, generation or music be forthwith discontinued until such conditions as the municipality may deem necessary have been complied with;
  - (c) set conditions relating to noise control to be included in the conditions of the establishment of a new township, in order to achieve the objectives of the Act;
- (3) The provisions of subsection (1) do not apply to existing rights.

#### **8. Designation of Controlled Areas**

- (1) The municipality may -
- (a) by notice in the provincial gazette, designate a controlled area in its area of jurisdiction or amend or cancel an existing controlled area; and by notice in the Provincial Gazette; and
  - (b) designate zone sound levels for specific areas and for specific times in its area of jurisdiction or amend or cancel such designation;
- (2) No person may -
- (a) erect educational, residential, flat, hospital, church or office buildings in an existing township in a controlled area or area for which a zone sound level has been designated in terms of subsection (1)(b), unless acoustic screening measures have been provided in the building to limit the reading on an integrating impulse sound level meter, measured inside the building after completion, to 40 dBA or such level as may be determined in accordance with subsection (1)(b): Provided that any airconditioning or ventilating system shall be switched off during the course of such noise measurements;
  - (b) locate educational, residential, hospital or church erven within a controlled area in a new township or an area that has been rezoned: Provided that such situation may be allowed by the municipality in accordance with the acoustic screening measures mentioned by that municipality in the approved building plans.

#### **9. Motor Vehicles**

- (1) No person may drive a vehicle, or allow it to be driven, on a public road, if the sound level at the measuring point measured in accordance with the procedure prescribed in SANS 10181 exceeds:
- (a) in the case of a non-exempted vehicle, the sound level specified in Table 1 of SANS 10281 for that type of vehicle; or
  - (b) in the case of an exempted vehicle, the applicable sound level indicated in the tables of Annexure A to SANS 10281, for that type of vehicle by more than 5 dBA;

- (2) The municipality may –
- (a) in order to determine whether a vehicle being used on any road in the area of jurisdiction of that municipality, including a private, provincial or national road crossing its area of jurisdiction, complies with the provisions of these regulations, instruct the owner or person in control of the vehicle –
    - (i) to have an inspection or test conducted on the vehicle as the municipality may deem necessary, on a date and at a time and place determined by the municipality in writing; and
    - (ii) to stop the vehicle or cause it to be stopped;
  - (b) subject to the provisions of subsections (3) and (4) and the applicable provisions of any other law, attach a vehicle if the sound level of such vehicle exceeds the sound level referred to in subsection (1) by more than 5 dBA.
- (3) A vehicle attached under subsection (2)(b) must be kept in safe custody by a municipality;
- (4) The municipality may lift the attachment contemplated in subsection (2)(b) if the owner or person in control of the vehicle concerned has been instructed in writing by such authority –
- (a) to repair or to modify the vehicle concerned or to cause it to be repaired or to be modified; and
  - (b) to have any inspection or test, as the municipality may deem necessary, conducted on the vehicle on a date and a time and place mentioned in the instruction.

#### **10. Music, Open-Air Music Festivals and Similar Gatherings**

- (1) Subject to the provisions of sections 5 and 6(a), no person may operate or play a radio, television set, gramophone, recording device, drum, musical instrument, sound amplifier or similar device producing, reproducing or amplifying sound, or allow it to be operated or played, in a public place, if the noise level, measured at any point which may be occupied by a member of the public or at one metre from the source of the sound, exceeds 95 dBA, unless permission has been obtained from the municipality.
- (2) No person may stage an open-air music festival or similar gathering without the prior written consent of the municipality and the municipality may impose conditions.
- (3) If any music causes or may cause a noise nuisance or a disturbing noise, the municipality may instruct in writing that such music be forthwith discontinued until such conditions as the municipality may deem necessary have been complied with.
- (4) Subject to the provisions of subsections (5) and (6) and the applicable provisions of any other law, the municipality may attach any instrument used to generate music if the sound level of such instrument exceeds the sound level referred to in subsection (1) and no permission has been obtained from the municipality.
- (5) An instrument attached under subsection (4) shall be kept in safe custody by a municipality.
- (6) The municipality may lift the attachment contemplated in subsection (4) if the owner or person in control of the instrument has applied for permission in terms of subsection (1).

**PART III: GENERAL PROVISIONS****11. General powers of the municipality**

The municipality may –

- (a) for the purpose of applying these regulations, at any reasonable time enter a premises –
  - (i) to conduct any examination, inquiry or inspection thereon as it may deem expedient; and
  - (ii) to take any steps it may deem necessary;
- (b) if a noise emanating from a building premises, vehicle, recreational vehicle, animal or street is a disturbing noise or noise nuisance, instruct in writing the person causing such noise or who is responsible therefore, or the owner or occupant of such building, premises, vehicle, recreational vehicle or street, or all such persons, to discontinue or cause to be discontinued such noise or to take steps to lower the level of such noise to a level conforming to the requirements of these regulations within the period stipulated in the instruction: Provided that the provisions of the paragraph shall not apply in respect of a disturbing noise or noise nuisance caused by rail vehicles or air traffic or by vehicles that are not used as recreational vehicles on a public road;
- (c) if the owner or person in charge of an animal fails to comply with an instruction referred to in subsection (b), subject to the applicable provisions of any other law, impound or cause to be impounded such animal;
- (d) impose such conditions as it deems fit when granting any permission or exemption in terms of these regulations, including the specification of times and days when activities that may cause noise are permitted or prohibited;
- (e) subject to the applicable provisions of any other law, place or cause to be placed measuring instruments or similar devices, road traffic signs or notices at any place within its area of jurisdiction for the enforcement of the provisions of these regulations: Provided that road traffic signs and notices shall be placed on private property only with the permission of the owner.

**12. General prohibition**

No person may –

- (a) fail to comply with a written condition, instruction, notice, requirement or demand issued by a municipality in terms of these regulations;
- (b) tamper with, remove, put out of action, damage or impair the functioning of a noise monitoring system, noise limiter, noise measuring instrument, acoustic device, road traffic sign or notice placed in a position by or on behalf of a municipality;
- (c) for the purposes of these regulations, in respect of a duly authorized employee of a municipality –
  - (i) fail or refuse to grant admission to such employee to enter and to inspect a premises;
  - (ii) fail or refuse to give information which may lawfully be required of him or her to such employee;
  - (iii) hinder or obstruct such employee in the execution of his or her duties; or
  - (iv) give false or misleading information to such employee knowing that it is false or misleading.

### **13. Use of Measuring Instruments**

- (1) Any person taking reading must ensure that –
  - (a) the acoustic sensitivity of sound level meters is checked before and after every series of measurements by using a sound calibrator, verified every two years by an accredited calibration laboratory for compliance with the specifications for accuracy of national codes of practice for acoustics, to comply with the Measuring Units and National Measuring Standards Act 2006 (Act No. 18 of 2006);
  - (b) the microphones of sound measuring instruments are at all times provided with a windshield;
  - (c) the sound measuring instruments are operated strictly in accordance with the manufacturer's instructions; and
  - (d) sound measuring instruments are verified every two years by an accredited calibration laboratory for compliance with the specifications for accuracy of national codes of practice for acoustics, to comply with the Measuring Units and National Measuring Standards Act 2006(Act No. 18 of 2006).
- (2) The measuring of dBA values in respect of controlled areas, ambient sound levels or noise levels in terms of these regulations shall be done as follows:
  - (a) outdoor measurements on a piece of land: By placing the microphone of an integrating impulse sound level meter at least 1,2 metres, but not more than 1,4 metres, above the ground and at least 3,5 metres away from walls, buildings or other sound reflecting surfaces; and
  - (b) indoor measurements in a room or enclosed space which is not ventilated mechanically: By placing the microphone of an integrating impulse sound level meter at least 1,2 metres, but not more than 1,4 metres, above the floor and at least 1,2 metres away from the wall, with all the windows and outer doors of the room or enclosed space entirely open: Provided that windows and doors are closed for indoor measurements in rooms or enclosed spaces which are mechanically ventilated.
- (3) Any deviation from heights and distances referred to in subsection (2) shall be reported with the furnishing of reason.

### **14. Exemptions**

- (1) The provision of these regulations shall not apply, if –
  - (a) the emission of sound is necessary for the purpose of warning people of a dangerous situation; or
  - (b) the emission of sound takes place during an emergency.
- (2) Any person may by means of a written application apply to the municipality concerned for exemption from any provision of these regulations.
- (3) The municipality may –
  - (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted shall be stipulated therein;
  - (b) alter or cancel any exemption or condition in an exemption;
  - (c) refuse to grant an exemption.
- (4) An exemption shall not take effect before the applicant has undertaken in writing to comply with all conditions imposed by a municipality under subsection (3): Provided that if activities are commenced before such undertaking has been submitted to the municipality concerned, the exemption shall lapse.

(5) If any condition of an exemption is not complied with the exemption shall lapse forthwith.

**15. Offences and penalties**

Any person who contravenes or fails to comply with any provision of this by-law will be guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine and such imprisonment, and, in the event of a continuing contravention, to a fine for every day such offence continues, or to both such fine and such imprisonment for each day on which such contravention continues, or in default of payment thereof, to imprisonment.

**16. Restriction of Liability**

No authorized employee of the municipality shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this by-law.

**17. Repeal of by-laws**

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this by-law.

**18. Short title and commencement**

This by-law shall be known as the Noise Control By-law of the Frances Baard District Municipality and comes into operation on the date of publication thereof in the Provincial Gazette.

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**FRANCES BAARD DISTRICT MUNICIPALITY:  
MUNICIPAL HEALTH BY-LAW**

CHAPTER 1: MUNICIPAL HEALTH NUISANCES

CHAPTER 2: HEALTH NUISANCES ARISING FROM THE KEEPING OF ANIMALS

CHAPTER 3: ANIMAL ESTABLISHMENTS

CHAPTER 4: ACCOMMODATION ESTABLISHMENTS

CHAPTER 5: CHILD CARE FACILITIES

CHAPTER 6: SWIMMING POOLS AND WATER RELATED RECREATIONAL FACILITIES

CHAPTER 7: BARBERS, HAIRDRESSERS, BEAUTICIANS, BODY PIERCERS OR TATOOISTS

CHAPTER 8: WASTE MANAGEMENT

CHAPTER 9: WATER AND SANITATION

CHAPTER 10: DISPOSAL OF CORPSES AND DISTURBANCE OF MORTAL REMAINS

CHAPTER 11: DRY-CLEANING AND LAUNDRY BUSINESSES AND DEPOTS

CHAPTER 12: ENFORCEMENT

CHAPTER 13: MISCELLANEOUS PROVISIONS

**1. Definitions**

In this by-law unless the context otherwise indicates: -

**"accommodation establishment"** means a place in which accommodation is provided for gain, with or without meals and includes homes for the aged;

**"animal"** means any equine, bovine, sheep, goat, pig, 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;

**"animal disease"** means an impairment or disturbance of the normal function of any organ or the body of any animal that is caused by an organism or substance;

**"animal waste"** means the faeces, manure, droppings, shed hair, feathers, bones, horns, blood and entrails of an animal, bird or poultry.

**"approved"** means approved by the municipality, with regard to the environmental health requirements of the particular case;

**"barber, hairdresser, beautician, body piercer or tattooist"** means a person who carries on the business of barber, hairdresser, beautician, body piercer or tattooist in a salon or any other place, which business comprises

any one or more of the following or similar services or activities, or a combination thereof, which are applied to the male or female human body:

- (a) cutting, shaving, singeing, shaping, shampooing, cleansing, conditioning, treating, chemical reformation (such as but not limited to permanent waving) relaxing, straightening and colouring (such as but not limited to tinting, dyeing, colouring, whether by permanent or temporary or semi-permanent means, and including the use of colour rinses, shampoos, gels or mousses, and lightening by means of tints, bleaches, highlights or high lifting tints or toners) of the hair on the human head;
- (b) other than by a process contemplated in paragraph (a), removing hair by means of, but not limited to, waxing, chemical compounds (such as but not limited to depilatories), electrical or mechanical means, whether or not heat or an appliance or apparatus is used in any of these activities;
- (c) treating hair by means of a trichological process or method;
- (d) adding to hair of natural or artificial hair by means of, but not limited to an extension, board work, or a wig;
- (e) shaping, shaving, plucking, treating or tinting an eyebrow or eyelashes or applying an artificial eyebrow or eyelashes;
- (f) skin care of the face, including but not limited to the application of cosmetics;
- (g) applying nail technology, such as but not limited to manicuring, pedicuring, or applying false nails or extensions;
- (h) piercing of the skin ("body piercing") or tattooing;
- (i) massaging;
- (j) bronzing such as by means of, but not limited to, ultraviolet radiation; and
- (k) contouring, such as but not limited to, slimming.

**"biodegradable industrial wastewater"** and solids means wastewater and solid material that contains predominantly organic waste arising from industrial activities and premises including-

- (a) milk processing;
- (b) manufacture of fruit and vegetable products;
- (c) sugar mills;
- (d) manufacture and bottling of soft drinks;
- (e) water bottling;
- (f) production of alcohol and alcoholic beverages in breweries, wineries or malt houses;
- (g) manufacture of animal feed from plant or animal products;
- (h) manufacture of gelatine and glue from hides, skin and bones;
- (i) abattoirs;
- (j) fish processing;
- (k) feedlots;
- (l) intensive animal feeding systems;
- (m) sewage treatment plants; and
- (n) food preparation, -production or -handling plants;

**"bird"** means a pigeon, dove, peafowl, pheasant, partridge, canary, budgerigar, parrot, ostrich, poultry and any other domesticated bird or wild bird kept in captivity;

**"building, structure or enclosure "** means a building, structure or enclosure such as, but not limited to, a stable, shed, dove-cote, kennel, pen, sty, camp, kraal, cow-shed, lean-to, room, tent, vehicle, stream, dam, pool, pan, drain, or ditch (open, covered, or enclosed) erected or constructed in or upon land or premises and which is used in connection with the keeping of an animal by an owner of an animal or owner or user of land;

**"cattery"** means an accommodation establishment which caters for the boarding of cats;

**"cemetery"** means a land or part of a land within the municipal area set aside as a cemetery;

**"child"** means a person who has not reached the age of 18 years;

**"child care facility or institution"** means any undertaking or institution, whether for profit or otherwise, involving the custody, care or tuition or any combination of these functions, during the whole or part of the day on all or any of the days of the week of children, or the building or the premises maintained or used for the purpose of conducting such undertaking or institution thereon as the case may be;

**"crematorium"** means a crematorium as defined in section 1 of the Crematorium Ordinance, 1965 (Ordinance No 18 of 1965) and includes the buildings in which a ceremony is conducted and the cremation carried out;

**"Council"** means the Frances Baard District Municipal Council;

**"communicable disease"** means a disease resulting from an infection due to pathogenic or toxic agents generated by the infection, following the direct or indirect transmission of the agents from the source to the host;

**"domestic wastewater"** means wastewater arising from domestic and commercial activities and premises, and may contain any form of sewage;

**"dog kennel"** means an accommodation establishment which caters for the accommodation of dogs;

**"dry-cleaning or laundry business"** means any business in which clothes or other fabrics are cleaned with water or other solvents, or clothes or fabrics are ironed;

**"dry-cleaning or laundry receiving depot"** means premises used for the receipt, storage and dispatch of clothes or other fabrics in connection with a dry cleaning or laundry business.

**"environment"** means the surroundings within which humans exist made up of –

(a) the land, water and atmosphere of the earth;

(b) micro-organisms, plant and animal life;

(c) any part or combination of (a) and (b) and the interrelationships among and between them; and

(d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

**"environmental health practitioner"** means the person appointed under section 49 of this by-law and sections 80 to 89 of the National Health Act, 2003 (Act 61 of 2003);

**"hazardous waste"** means waste that has the potential, even in low concentrations, to have an adverse effect on the environment and environmental health because of its inherent toxicological, chemical or physical characteristics and could include biological waste such as sewerage;

**“health care waste”** means waste generated by a hospital, clinic, nursing home, doctor's offices, medical laboratory, research facility, dental practitioner, medical practitioner, traditional healer, body piercer, tattoo artist, traditional surgeon and veterinarian or any other place where health care waste are generated and which are infectious or potentially infectious, and includes –

- (a) microbial wastes including wastes including cultures and stocks of infectious wastes and associated biologicals that can cause disease in humans;
- (b) human blood and blood products, including serum, plasma and other blood components;
- (c) pathological wastes of human origin, including tissues, organs and body parts removed during surgery or autopsy;
- (d) contaminated animal wastes including animal carcasses, body parts and bedding which have been exposed to infectious agents during medical research, pharmaceutical testing or production of biologicals;
- (e) isolation wastes associated with animals or human beings known to be infected with highly communicable diseases; and
- (f) contaminated and uncontaminated sharps, including clinical items which can cause a cut or puncture or injection, such as needles, syringes, blades and microscope slides;
- (g) used medical equipment and other medical material which is capable or is reasonably likely to be capable of causing or spreading disease or causing or spreading infection, such as used surgical dressings, swabs, blood bags, laboratory waste, blood collection tubes, colostomy- and other catheter-bags, gloves, drip bags, administration dines and tongue depressors.
- (h) pharmaceutical products of which the period of use has expired or which has been contaminated or have been stored improperly or are no longer required such as human and animal vaccines, medicine and drugs;
- (i) genotoxic chemical waste and radio isotopes from experimental or diagnostic work or any other source.

**“home for the aged”** means any institution or other place of residence maintained mainly for the accommodation and care of aged or debilitated persons;

**'intensive animal-feeding system'** means any farming system having as its object the breeding of animals or the production of meat, milk, eggs, furs or any other product of animal origin and where the animal in question is kept in a confined space so as to accomplish intensive feeding or maximum control of or maximum food conversion in the animal;

**"irrigation"** means the application of wastewater to recreational grounds and for the purpose of crop production and the cultivation of pasture ;

**"marine fauna"** means any marine living resources from the sea and the seashore, including any aquatic plant, whether piscine or not, and any mollusc, crustacian, coral, sponge, holothurian or other echinoderm, reptile, marine mammal and seabird and include their eggs, larvae and all juvenile stages;

**"municipal health nuisance"** means an occurrence specified in section 3(1) and (2) of this by-law;

**"municipality"** means the Frances Baard 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;

**"municipal health services"** includes-

- (a) water quality monitoring;
- (b) food control;
- (c) waste management;
- (d) health surveillance of premises;
- (e) surveillance and prevention of communicable diseases, excluding immunisations;
- (f) vector control;
- (g) environmental pollution control;
- (h) disposal of the dead; and
- (i) chemical safety,

but excludes port health, malaria control and control of hazardous substances;

**"municipal manager"** means a person appointed as such by the municipality in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

**"occupier"** means any person who occupies any premises or part thereof without regard to the title under which he or she occupies, and includes –

- (a) any person in actual occupation of those premises;
- (b) any person legally entitled to occupy those premises;
- (c) in the case of those premises being subdivided and let to lodgers or various tenants, the person receiving the rent payable by such lodgers or tenants whether on the person's own account or as agent for any person entitled thereto or interested therein;
- (d) any person having the charge or management of those premises, and includes the agent of any such person when the person is absent from the Republic of South Africa or his or her whereabouts are unknown; and
- (e) the owner of those premises;

**"overcrowding"** means

- (a) a residential occupancy in excess of 12 occupants per sanitary convenience; and/or
- (b) occupancy of habitable rooms (being all rooms in a dwelling excluding kitchens, bathrooms and sanitary conveniences) utilised for sleeping purposes where such occupation exceeds 1 adult person per 4 m<sup>2</sup> and 1 child under 10 years of age per 2 m<sup>2</sup>, or in situations where double bunks are used for sleeping purposes, occupation exceeds 3m<sup>2</sup> per adult person (occupying a double bunk bed) and/or 2m<sup>2</sup> per child under 10 years occupying a double bunk;

**"owner"**, in relation to –

- (a) animals or things, conveyances and other movable property, means the person in whom ownership is vested and includes a person who is responsible for the control or management thereof or a person who has such animal or thing, conveyance or movable property in his or her possession, but in the case of game or animals that are not branded in terms of the Animal Identification Act, 2002 (Act No 6 of 2002), or of

which the ownership cannot readily be established, the user of the land on which such game or animals are present is deemed to be the owner; and

(b) land –

that land is registered;

(i) means the person in whose name

(ii) that has been purchased by a person but has not yet been registered in his or her name, means such purchaser;

(iii) that is subject to a usufruct, means the usufructuary;

(iv) of which the owner or purchaser is a minor, mentally disabled person, insolvent or is otherwise incompetent in law to administer his or her estate, or is deceased, or is a body corporate under judicial management or liquidation, means the agent or legal representative of such owner or purchaser or another person authorised by law to administer his or her affairs or, in the case of a body corporate, the judicial manager or liquidator concerned; and

(v) a category B municipality which is in control of land by virtue of the powers and functions allocated to it in terms of Schedules 4B and 5B of the Constitution;

**"person"** means a natural and legal person, including but not limited to an association of persons, a partnership, and a company;

**"pet parlour"** means an establishment where pets are groomed;

**"pet shop"** means an establishment where pets are kept for trading purposes;

**"poultry"** means a fowl such as a dove, pigeon, chicken, turkey, goose, duck, muscovy-duck, bantam-fowl and guinea fowl, goose, swan or any other similar type of poultry-like bird whether domesticated or not, including the young of such poultry;

**"premises"** means –

(a) land or a portion of land, whether or not a building or structure has been constructed or erected on the land or portion of land; or

(b) a building or structure and the land on which it is situated;

**"proprietor"** means the person who owns or operates an accommodation establishment;

**"publish"** in respect of the provisions of section 55 means –

(a) to publish a notice in the Provincial Gazette and a local newspaper; and

(b) to display the notice so published on the notice boards of the municipality;

**"responsible authority"** means the authority or municipality responsible for the execution of waste disposal functions within the area of jurisdiction of Frances Baard District Municipality;

**"salon"** means a place where any one or more of the services or activities contemplated in the definition of "barber, hairdresser, beautician, body piercer or tattooist" are normally carried on;

**"swimming pool"** means a swimming pool that is accessible to the public and includes swimming pools at schools or other tertiary institutions and other water related recreational facilities accessible to the public;

**"user"**, in relation to land, means –

(a) any person who has a personal or real right in respect of land in his or her capacity as fiduciary, fideicommissary, servitude holder, possessor,

lessee or occupier, irrespective of whether or not he or she resides thereon; and

(b) any other person who is generally recognised as having a right of tenure on the land concerned;

“**waste**” means any matter or waste material arising from the use of any land or premises, but does not include hazardous waste;

“**wastewater**” means water containing waste, or water that has been in contact with waste material and may include biodegradable industrial wastewater and domestic wastewater;

“**water resource**” means a source as defined in section 1 of the National Water Act, Act No. 36 of 1998;

“**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. Principles and objectives**

- (1) The municipality, aware of the constitutional right of every person to an environment that is not harmful to his or her health or well-being, and the principles that underlie the National Health Act, 2003 (Act 61 of 2003) and the National Environmental Management Act, 1998 (Act 107 of 1998), adopts this by-law with the aim of protecting and promoting the health and well-being of all people in the Frances Baard district by providing, in conjunction with applicable laws, a legal and administrative framework within which the municipality can develop and manage its municipal health obligations.
- (2) In the development and management of its municipal health obligations and the implementation of this by-law, the municipality also recognises the infrastructural, social and economical disparities and inequalities resulting from previous local government dispensations and shall strive to overcome such disparities and inequalities by supporting the new goals for local government as laid down in section 152 of the Constitution.
- (3) In the implementation and enforcement of this by-law, the municipality may take into consideration the realities of the Frances Baard district, the different customs, cultures, circumstances, geographical areas, kinds of premises, levels of development and conventions and the municipality may use the devices provided for in this by-law, including the application of different norms, standards and guidelines, the granting of exemptions and the utilisation of liaison forums as contemplated in sections 55, 60 and 61 of this by-law.

CHAPTER 1  
MUNICIPAL HEALTH NUISANCES AND HEALTH RISKS*Part 1*  
*Health nuisances and health risks***3. Health nuisances and health risks**

- (1) A municipal health nuisance exists or occurs if any of the following exists or occurs on any land or premises:
- (a) a water pool, ditch, gutter, dung pit or heap is so foul or in such a state or so situated or constructed to be harmful or dangerous to health;
  - (b) an accumulation of waste or other matter which is harmful or dangerous
  - (c) where wastewater used for the purposes of irrigation does not comply with the standards set in the Guide: Permissible utilization and disposal of treated sewage effluent published by the Department of Health, dated 30 May 1978 and where the limits for Enteric viruses and Protozoan parasites as set in SANS Code 241/2006 are not exceeded;
  - (d) wastewater which is discharged into a water source including the sea through a pipe, canal, sewer or other conduit or any other means that does not comply with the standards contemplated in sub-section (c).
  - (e) a building, structure or enclosure is –
    - (i) so constructed, situated, used or kept as to be harmful or dangerous to health;
    - (ii) kept or permitted to remain in a state as to be harmful or dangerous to health; or
    - (iii) infested with pests or vermin or in a state that is conducive to the breeding of pests or vermin;
  - (f) conditions exist that are conducive and contribute to the spread of a contagious and communicable disease;
  - (g) organic matter or animal waste are being used or kept in a manner that attracts vermin or pests such as, but not limited to rats, mice, flies, cockroaches and mosquitoes;
  - (h) unhygienic conditions are present on any part of the land or premises;
  - (i) a building, structure or enclosure is erected without first removing or decontaminating in an approved manner, any faecal, animal or vegetable waste disposed of on the land or premises; or
  - (j) a building or structure is demolished without first eradicating all vermin;
  - (k) a dwelling or any other premises is occupied for which no proper and sufficient supply of pure water is available as prescribed in terms of the Water Services Act;
  - (l) a dwelling or building is occupied for which no proper toilet facilities as required in terms of the National Building Regulations and Building Standards Act 1977 (Act 103 of 1977) are available;
  - (m) a dwelling or building is occupied which is not properly ventilated in accordance with the National Building Regulations and Building Standards Act 1977 (Act 103 of 1977);

- (n) a carcass or the remains of an animal, poultry, bird or marine fauna, or any animal waste remains unburied or is not suitably disposed of for more than 24 hours after death;
  - (o) where dust is generated on a building site or the site on which a quarry is operated in such volumes and to such an extent that it may be harmful or dangerous to health;
  - (p) an animal is allowed to suffer from an infectious or contagious disease;
  - (q) a person in control of a dog on a street or public land fails to remove the droppings of such a dog;
  - (r) domesticated cats, fish or rodents generally regarded as pets are kept in such a manner that a health nuisance or the potential for a nuisance is created; or
  - (s) domesticated birds are kept in cages or lofts, in such a manner that a health nuisance or the potential for a health nuisance is created.
- (2) In addition to the instances stipulated in subsection (1), a municipal health nuisance exists or occurs if any premises –
- (a) is not ventilated so as to destroy or render harmless as far as practicable any gases, vapours, dust or other impurities generated which may be dangerous to human health;
  - (b) is so overcrowded, badly lit or ventilated as to be harmful or dangerous to the health of those employed therein or thereon; or
  - (c) cause or give rise to effluvia which are harmful or dangerous to health.
- (3) The provisions of subsections (1)(k), (l), and (m) and (2) shall not apply to dwellings, buildings or premises which form part of any settlement as contemplated by the Less Formal Township Establishment Act, Act No 113 of 1991, whether or not the land on which the dwelling, building or premises is situated has been designated for less formal settlement in terms of the said Act.
- (4) No person may overnight or allow to be accommodated on premises where food are handled or prepared on premises zoned for business or industrial purposes where such overnight or accommodation creates a health risk or has the potential to create a health risk.
- (5) No person may house or allow any person to overnight on premises where food are handled or prepared on premises zoned for business or industrial purposes where such overnight or accommodation creates a health risk or has the potential to create a health risk.

*Part 2*  
*Specific health nuisances*

#### **4. Overgrown property and property with unsightly accumulations**

- (1) No owner or occupier of any erf may allow it to be overgrown with bush, weeds or grass or other vegetation to such an extent that it may be used as a shelter by vagrants, wild animals or vermin to such an extent that it may threaten the health of any member of the community.

(2) No person may fail to keep any premises owned or occupied by him clean and free from filth, debris, rubbish, glass, paper, rags, tins, lumber, weeds or undergrowth is unsightly or likely to become a nuisance or injurious to health.

**5. Overcrowding and health nuisances on premises**

No person shall occupy or cause or permit to be occupied any premises for habitable purposes so as to be a health nuisance, whether by overcrowding or otherwise.

**6. Maintenance of common areas of premises**

The owner of any premises, which is let or sublet to more than one tenant, shall maintain at all times in a clean and sanitary condition every part of such premises as may be used in common by more than one tenant.

**7. Pollution of sources of water supply**

No person may pollute or contaminate any catchment area, river, canal, well, reservoir, filter bed, water purification or pumping works, tank, cistern or other source of water supply or storage.

**8. Maintenance and cleanliness of sanitary systems**

No owner or occupier of any premises shall -

- (a) fail to maintain the sewers, drains, water fittings, waste water fittings, water closet fittings and all other sanitary accessories forming part of or attached to any building or structure in good and sound repair;
- (b) keep, cause or suffer to be kept upon any premises any toilet, urinal, bath, sink, basin, shower or cistern of such nature or in such condition that it is a health nuisance.

**9. Disposal of sewage and wastewater without causing a health nuisance**

No person may dispose of sewage or waste water from any bath, wash-hand basin, toilet, shower or kitchen sink in a way or in a location that may -

- (a) cause dampness in or on any premises;
- (b) endanger the quality of any water supply, surface water, stream or river; or
- (c) create a health nuisance.

**10. Blocked or defective outlet pipes**

Every owner or occupier of premises must keep any drainage system free from obstruction and in a good condition.

### **11. Toilets for workers**

Every contractor must provide his or her workers from the commencement of work up to finalization of the work with toilet facilities as prescribed by the National Building Regulations and Building Standards Act, 1977.

### **12. Dangerous wells, boreholes and excavations**

Every owner or occupier of premises must ensure that any well, borehole or other excavation located on his or her premises –

- (a) is fenced, filled in or covered over in a way that adequately safeguards it from creating a health nuisance or danger to inhabitants; and
- (c) is not filled in a way, or with material, that may cause any adjacent well, borehole or underground water source to be polluted or contaminated to an extent that may create a health nuisance.

#### *Part 3*

#### *Prohibition and elimination or reduction of health nuisances*

### **13. Prohibition on the creation, existence or occurrence of a municipal health nuisance**

- (1) No person may, in any area under the jurisdiction of the municipality –
  - (a) create a municipal health nuisance;
  - (b) perform any act which may cause a municipal health nuisance;
  - (c) organise, allow or permit an activity, event or function in or on land or premises, or use, cause, allow or permit to be used land or premises for a purpose which by its nature or otherwise or reason of its consequences creates or is likely to create a health nuisance;
  - (d) unless he or she is authorised or permitted by law to do so or does so with the written permission of the municipality and in accordance with any conditions imposed by the municipality –
    - (i) in a public place activate, handle or use any material, object or thing which is likely to cause a municipal health nuisance;
    - (ii) introduce into or handle in a public place any material, object or thing or any liquid or solid substance which by its nature or by reason of the manner of its introduction or handling creates a municipal health nuisance;
  - (e) carry, convey, or cause or permit to be carried or conveyed through or in any street or public place, any objectionable material or thing, liquid or solid, which is or may become dangerous or harmful to health, unless such objectionable material or thing is covered with a suitable material to prevent the creation of any municipal health nuisance; or
  - (f) by an action directly or indirectly or by negligence allow that a municipal health nuisance be created or continued.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

- 14. Duty to eliminate or reduce a municipal health nuisance**
- (1) (a) The owner, occupier or user of land or premises must –
- (i) ensure that a municipal health nuisance does not exist or occur on his or her land or premises; and
  - (ii) within 24 hours of becoming aware of the existence of a municipal health nuisance on the land or premises, eliminate the municipal health nuisance, or if he or she is unable to eliminate the municipal health nuisance –
    - (aa) take steps to the satisfaction of the municipality to reduce the risk to municipal health; and
    - (bb) report the existence of the municipal health nuisance to the municipality.
- (b) For the purposes of subsection (1)(a), the owner, occupier or user of land or premises must, for the purpose of eliminating or reducing the quantity of –
- (i) flies, use fly-traps or any other approved method and maintain devices used regularly to ensure optimum performance
  - (ii) in the case of feedlots and intensive animal feeding systems, remove animal excrement weekly from the property;
  - (iii) mosquitoes –
    - (aa) drain accumulated water at least once every seven days;
    - (bb) cover accumulated water with oil;
    - (cc) in the case of wells, provide a mosquito-proof cover and a pump;
    - (dd) fit tanks, barrels and similar containers in which mosquitoes may breed with mosquito-proof covers or mosquito wire gauze screens in a manner that prevents mosquitoes gaining access to water contained in them; and
    - (ee) regularly clean blocked or sagging gutters and down pipes so that stagnant water cannot accumulate in them; and
  - (iv) vermin, use mouse traps or vermin poison or any other method approved by the municipality
- (2) The owner, occupier or user of land or premises must ensure that every well, hole, pit, reservoir, pond or excavation thereon is not filled in a way, or with any material, that may cause any other well, borehole or underground water source to be polluted or contaminated to an extent that may create a municipal health nuisance.
- (3) The occupier must cause all waste to be placed in refuse receptacles provided by the owner or by the responsible authority to be disposed of in a manner contemplated in section 37.
- (4) The owner, occupier or user of land or premises who contravenes a provision of subsection (1) or (2) or the occupier who contravenes a provision of subsection (3) commits an offence.

CHAPTER 2  
HEALTH NUISANCES ARISING FROM THE KEEPING OF ANIMALS

**15. Application of Chapter**

- (1) This Chapter applies to any owner of an animal, bird, poultry, fish or crustaceans who keeps an animal, bird, poultry, fish or crustaceans for whatever purpose within the jurisdiction of the municipality.
- (2) A person who keeps an animal, bird, poultry, fish or crustaceans in terms of an approved land use, or on premises or land zoned for agricultural purposes, is not exempt from the provisions of this by-law or other legislation with regard to the inception or bringing about of a municipal health nuisance.

**16. Keeping and slaughtering of animals**

- (1) The owner of an animal, bird, poultry, fish or crustaceans or the owner, occupier or user of land or premises may not keep such animal, bird, poultry, fish or crustaceans in or on a building, structure or enclosure or any premises in a manner that constitutes a municipal health nuisance.
- (2) Any person who wishes to undertake a traditional or cultural slaughtering of an animal or animals on any premises other than in an abattoir, must do so in terms of the municipality's policy relating to the slaughtering of animals.
- (3) A person who contravenes subsections (1) & (2) commits an offence.

**17. Carcasses of animals**

- (1) The owner of an animal, bird, poultry fish or crustaceans or the owner, occupier or user of land or premises must as soon as reasonably practical, in accordance with subsection (4), dispose of the carcass of an animal, bird, poultry, fish or crustaceans that has died on such premises or land.
- (2) The owner, occupier or user of land or premises must as soon as reasonably practical, in accordance with subsection (4), dispose of the carcass or remains of marine fauna that has died or washed up on such premises or land.
- (3) Should an owner of an animal or owner, occupier or user of land or premises fail to dispose of a carcass, the environmental health practitioner may arrange for the disposal of the carcass and may recover the cost involved from the owner of the animal, bird, poultry, fish or crustaceans or the owner or user of the land or premises.
- (4) A person contemplated in subsections (1 and 2) must dispose of a carcass in one of the following manners:
  - (a) He or she must take steps to have the carcass removed by a registered animal organization or by a person authorized to do so in terms of the responsible authority's waste regulations; or
  - (b) if the premises are suitable, he or she must bury the carcass at a depth which completely covers the whole carcass so that it cannot be dug up by an animal or cause a municipal health nuisance, provided that where the volumes of deaths are too high for burial on the premises, such carcasses must be buried at a facility approved by the municipality; or

- (c) if the animal died of a disease, he or she must deal with the carcass in accordance with paragraph (a).
- (5) No person may carry or convey through or along a street the carcass of an animal, bird, poultry, fish, crustaceans or animal waste or offal in such a manner that it creates or may create a municipal health nuisance.
- (6) This section does not apply in the instance where an animal, bird, poultry, fish or crustaceans is slaughtered for the purpose of human or animal consumption.
- (7) A person who contravenes a provision of subsections (1) to (5) commits an offence.

#### **18. Distances between buildings and animals**

- (1) No animal, bird or poultry may be kept on any land or premises in such close proximity to any building or facility that it may cause a municipal health nuisance to the occupants of such building or facility.
- (2) In the case of feedlots and intensive animal feeding systems, proximity to buildings and facilities contemplated in subsection (1) must be determined with due regard to geographical and environmental factors.
- (3) No cattle, horse, mule, donkey, pig, goat, sheep and ostrich may be kept within –
  - (a) 100 metres of a residence;
  - (b) 15 metres of any fence of such residence; and
  - (c) 50 metres of any borehole, watercourse or waters source that are meant for human consumption or that are consumed by humans.

#### **19. Keeping of bees**

- (1) No person may keep bees on any premises unless –
  - (a) that person is the holder of a permit authorising that activity;
  - (b) every bee hive is situated a minimum of thirty metres from any boundary of the premises, public place or building used for human habitation or from any place used for the keeping of animals, poultry and birds;
  - (c) the bees are kept in an approved bee hive;
  - (d) the bee hive is –
    - (i) kept in an area inaccessible to children and animals;
    - (ii) kept in the shade at all times;
    - (iii) supplied with a source of drinking water within five metres of the hive.
- (2) No person may dump or deposit any garbage, compost, grass cuttings or manure within five metres of any bee hive.
- (3) The provisions of subsection (1) do not apply to land zoned for agricultural purposes.

CHAPTER 3  
ANIMAL ESTABLISHMENTS

*Part 1*  
*Dog kennels and Catteries*

**20. Requirements relating to premises**

- (1) The person who owns or operates a dog kennel or cattery must ensure that the premises comply with the following requirements:
- (a) all waste- and storm water must be discharged into a sewerage- or other approved system;
  - (b) all loose foods must be stored in rodent free receptacles with tight fitting lids in a store room;
  - (c) isolation facilities must be provided for sick dogs and cats and the facilities must be of durable material and constructed so as to be easily cleaned and disinfected;
  - (d) all animal waste must be stored in solid containers with tight fitting lids and must be removed on a daily basis from the premises and disposed of in an approved manner; and
  - (e) all animal cages or holding enclosures must be cleaned on a daily basis and be kept in a hygienic and odour free condition.
- (2) No person may conduct the business of a dog kennel or cattery in any building, structure or enclosure which has direct access to, or has a door, window or other opening within 4 meters of any door, window or other opening to any existing habitable room or any existing room in which clothing is stored or food for human consumption is stored processed or sold.
- (3) A person who contravenes a provision of subsections (1) and (2) commits an offence.
- (what about the requirements /sizes of the cages in terms of the standard by-laws)

*Part 2*  
*Pet shops and parlours*

**21. Requirements relating to premises and employees**

- (1) A person who owns or operates a pet shop or pet parlor must ensure that the premises comply with the following requirements:
- (a) All cages must be –
    - (i) made entirely of a non corrosive material fitted with duplicate impervious movable trays and all tubular fittings must be closed at the ends; and
    - (ii) so arranged that the bottoms thereof are not less than 450 mm above the level of the floor or yard, as the case may be;
  - (b) storage space which is rodent-proofed, must be provided for animal bedding on the premises;
  - (c) meat, fish or perishable foodstuffs used in the feeding of an animal and stored in a pet shop, must be stored in a refrigerator which can maintain a temperature not exceeding 7°C;

- (d) clean and appropriate toilet facilities and a wash basin which is supplied with hot running water must be provided for those employed on the premises;
  - (e) no more than 70% of the floor area of the premises may be covered by cages or goods incidental to the business;
  - (f) all animal- and bird waste must be stored in solid containers with tight fitting lids and must be removed on a daily basis from the premises and disposed of in an approved manner; and
  - (g) all animal- and bird cages or holding enclosures must be cleaned on a daily basis and be kept in a hygienic and odour free condition.
- (2) No person may conduct the business of a pet shop or pet parlour in any building, structure or enclosure which has direct access to, or has a door, window or other opening within 4 meters of any door, window or other opening to any existing habitable room or any existing room in which clothing is stored or food for human consumption is stored, processed or sold.
- (3) A person who contravenes a provision of subsections (1) and (2) commits an offence.
- (what about the requirements /sizes of the cages in terms of the standard by-laws

#### CHAPTER 4 ACCOMMODATION ESTABLISHMENTS

##### **22. Application of chapter and certificate of acceptability**

- (1) This Chapter applies to a person who owns or carries on the business of providing accommodation for gain in an accommodation establishment on premises within the municipal area, but does not apply to a private home.
- (2) No home for the aged facility accommodating 6 or more aged or debilitated persons may be operated without a certificate of acceptability issued by the Environmental Health Practitioner and the issuing of such certificate will be subject to the conditions laid down in section 24.
- (3) Applications for a certificate of acceptability must be made on the prescribed form and will only be processed after payment of the application fee approved by the Municipality.
- (4) Written approval in terms of subsection (2) will not exempt any person or premises from the requirements of any legislation relating to the care of aged or debilitated persons or the land use of the premises concerned.

##### **23. Preparation and serving of food**

- (1) A proprietor who prepares or serves food on the premises for consumption by a guest, irrespective if the guest pays separately for the food or if a charge for the food is included in the accommodation costs, must comply with the provisions of the Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food, published under Government Notice No. R918 of 30 July 1999.

- (2) A proprietor who allows for the preparation of food on the premises by guests for consumption by a guest must comply with the provisions of the Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food, published under Government Notice No. R918 of 30 July 1999.

**24. Conditions on premises housing accommodation establishments**

- (1) A proprietor must ensure that his premises, household facilities, eating utensils, linen and bedding be kept in a clean and hygienic condition.
- (2) An accommodation establishment which operates as a home for the aged, a home based care centre or a shelter must comply with the following requirements:
- (a) The premises must be zoned for the purpose of operating a home for the aged, a home based care centre or a shelter and if such premises are zoned as "residential 1" the proprietor must apply for special consent to use the premises to operate a home for the aged, a home based care centre or a shelter.
  - (b) Single bedrooms must comprise not less than 7.4 square metres and double bedrooms must comprise not less than 14.8 square metres.
  - (d) A ward area must comprise not less than 7.4 square metres per resident and a ward may not be able to accommodate more than six (6) residents per ward.
  - (e) Provision must be made to accommodate different genders separately, but partners may be accommodated in double rooms.
  - (f) The floor area of common rooms must not be less than 1.85 square metres per person capable of being accommodated.
  - (g) Buildings must be ventilated in accordance with the National Building Regulations.
  - (h) At least 1 toilet and 1 bathroom must be provided for every 7 residents per gender and at least one toilet that is not situated in a bathroom, and which is available for general use, must be on the premises.
  - (i) At least one electrical power point must be installed per bedroom and common room.
  - (j) Hand rails must be affixed for use by the infirm on all stairways and ramps.
  - (k) Seating arrangements must be available in the dining area for the total number of residents that the facility can accommodate.
  - (l) Provision must be made to the satisfaction of the municipality for a refuse storage area, a refuse removal service and laundry services.
  - (m) Medical waste must be removed by an approved medical waste contractor.
  - (n) The premises must be fumigated at least once a month by a registered pest control service provider.
  - (o) A medicine control register, including dosages to residents, must be kept and the register must indicate the availability of a medicine cupboard.
  - (p) An emergency evacuation plan must be in place and displayed in a visible place.

- (q) Fire extinguishing equipment, as prescribed by the Chief: Fire Services must be installed.
- (r) A home for the aged must be accessible by wheel chair.

## CHAPTER 5 CHILD CARE FACILITIES

### 25. Certificate of acceptability

- (1) No child care facility accommodating 6 or more babies or toddlers or babies and toddlers may be operated without a certificate of acceptability issued by the Environmental Health Practitioner and the issuing of such certificate will be subject to the conditions laid down in section 26.
- (2) Applications for a certificate of acceptability must be made on the prescribed form and will only be processed after payment of the application fee approved by the Municipality.
- (3) Written approval in terms of subsection (1) will not exempt any person or premises from the requirements of any legislation relating to the care of children or the land use of the premises concerned.

### 26. Structural and other requirements

- (1) A childcare facility must comply with the following requirements:
  - (a) A facility situated within 50 meters of a public road or street or object or thing that may endanger the life of a child must have its open air playing area fenced in by a fence that will be without risk to children and must have a safety gate.
  - (b) The outdoor playing area must be free of any poisonous or thorny plants, shrubs or trees.
  - (c) The outdoor playing area must be free of any objects, rubble or disused materials which may cause injuries to children.
  - (d) Where sandpits are present, it must be treated regularly with salt and it must be covered after hours in order to make them inaccessible to animals.
  - (e) The walls and floors of classrooms must be splinter free and floor surfaces must be covered by an easily washable material.
  - (f) Classrooms must have enough windows to ensure adequate ventilation and lighting and low level windows must be safe.
  - (g) There must be at least 2 m<sup>2</sup> of indoor space available per baby (1 to 24 months) and 1.5 m<sup>2</sup> indoor space available per toddler (2 to 7 years) and if no outdoor space is available, the indoor space must be 2.5 m<sup>2</sup> per toddler.
  - (h) There must be at least one toilet available for every twenty children and toilet bowls and seats must be disinfected daily.
  - (i) If babies up to twenty four months are accommodated, a separate facility for the washing of potties and the daily washing of nappies must be provided.
  - (j) At least one hand wash basin for every twenty children or one bucket for every ten children must be available. Wash water must be replaced by clean water after ten children's hands have been washed in it. Soiled water must be disposed of in an approved manner. Soap and a drying cloth must be available at every hand wash basin.

- (k) A kitchen or a food handling or preparation facility must comply with the provisions of the Regulation Governing General Hygiene Requirements for Food Premises and the Transport of Food, published under Government Notice Nr R918 of 30 July 1999.
  - (l) All medicines, cleaning agents, liquid fuels, gas containers or any other poisonous or potentially harmful material must be stored safely and out of reach of children.
  - (m) Fire extinguishing equipment as specified by the Chief: Fire Services of the local municipality must be installed in the facility.
- (2) Notwithstanding the provisions of subsection (1) all child care facilities legally in operation at the time of promulgation of this by-law shall be exempted from requiring written approval for a period of one (1) year from the date of promulgation of this by-law.

## CHAPTER 6 SWIMMING POOL AND WATER RELATED RECREATIONAL FACILITIES

### **27. Duties of a swimming pool- and other water related recreational facility managers**

- (1) A swimming pool- and other water related recreational facility manager must
- (a) at all times keep the premises in a safe, clean and sanitary condition; and
  - (b) ensure that the water is at all times purified, treated and maintained to the standards mentioned in section 29(1).
- (2) A person who contravenes a provision of subsection (1) commits an offence.

### **28. Water supply**

- (1) A swimming pool- or other water related recreational facility manager may, for the purpose of cleaning, filling or maintaining the water level in a swimming pool or other water related recreational facility, use water from an approved source.
- (2) The environmental health practitioner may take samples of the water for the purpose of chemical analysis or bacteriological examination at times that he or she considers appropriate.
- (3) A person who contravenes subsection (1) commits an offence.

### **29. Safety of water**

- (1) A swimming pool- or other water related recreational facility manager must ensure that the water in the swimming pool or any other water related recreational facility complies with the following requirements:
- (a) The water must be free from floating, suspended or settled debris or swimming organisms;
  - (b) the walls, floor, access ladders or steps and gutters must be free from slime or algae;
  - (c) the total coli form bacteria count may not exceed 100 organisms per ml of water;
  - (d) Escherichia coli bacteria may not be present in any 100 ml of water; and
  - (e) Entero cocci bacteria may not be present in any 100 ml of water.

- (2) A person who contravenes a provision of subsection (1) commits an offence.

**CHAPTER 7**  
**BARBERS, HAIRDRESSERS, BEAUTICIANS, BODY PIERCERS or**  
**TATTOOISTS**

**30 Certificate of Acceptability**

- (1) No person may operate as a barber, hairdresser, beautician, body piercer or tattooist, and no barber, hairdresser, beauty, body piercing or tattooing salon may be operated without a certificate of acceptability issued by the environmental health practitioner and the issuing of such certificate will be subject to the conditions laid down in section 31(2)(a) – (q).
- (2) Application for a certificate of acceptability must be made on the prescribed form and will only be processed after payment of the application fee approved from time to time by the municipality.
- (3) Written approval in terms of section 30(1) will not exempt any person or premises from the requirements of any other legislation relating to body piercing or tattooing.

**31. Health requirements**

- (1) No person may use the premises of a salon for a purpose other than for the carrying on of the business of barber, hairdresser, beautician, body piercer or tattooist.
- (2) A person who carries on the business of barber, hairdresser, beautician, body piercer or tattooist in a salon or any other place, must –
- (a) at all times keep a first aid kit on the premises, and treat an injury or wound which may occur on the premises;
  - (b) install or have available in the salon an appliance or other means whereby an instrument that have come into contact with human skin, hair or bodily fluid, such as, but not limited to, blood, may be sterilized or disinfected;
  - (c) ensure that only professional tattooing and body piercing machines designed and assembled in a manner which prevents contamination of sterilized needle sets may be used for applying permanent tattoos or body piercing, and all tubes and needles must be stored in single service, sterile, sealed autoclaved bags which must be opened in the presence of the client;
  - (d) ensure that all clip cords and spray bottles have triggers and grasp areas, which grasp areas must be protected by plastic covering which must be disposed of after use on each client;
  - (e) after each use of a blade, razor, pair of scissors, comb, brush, roller, nail file, clippers, or other instrument which was applied to the human hair, nail or skin, disinfect the instrument by applying a suitable disinfectant.
  - (f) wear new disposable latex or nitrile examination gloves for the duration of a procedure where he or she implants hair, pierces or tattoos skin, or uses a chemical or chemical compound in an activity;

- (g) disinfect his or her hands before and after rendering any service to a client;
  - (h) directly after treatment of the client, clean and disinfect a surface that has been contaminated by body fluid; and
  - (i) dispose of any disposable glove or other disposable material after each use;
  - (j) at least once a day wash, with a disinfectant, all clothing such as aprons and caps, all surfaces such as, but not limited to, walls, floors, counters and chairs;
  - (k) dispose of all waste water, sharp instruments, bloodied and otherwise contaminated disposable towels and paper in an approved manner;
  - (l) store sharp instruments such as, but not limited to, a razor, blade or needle in a separate container;
  - (m) after each use, wash and clean all plastic and cloth towels;
  - (n) generally keep the premises, tools, equipment and clothing in a hygienic condition at all times;
  - (o) after every service, collect waste such as, but not limited to, hair clippings and towelling paper, and store or dispose of such waste in accordance with section 37;
  - (p) ensure that no animal, excluding a guide dog accompanying a blind person, enters the premises; and
  - (q) provide his or her employees with protective clothing, train any person working on the premises, and ensure that the employee complies with the provisions of this by-law.
- (3) A person who contravenes a provision of subsection (1) or (2) commits an offence.

### **32. Requirements for premises**

- (1) A person who carries on the business of barber, hairdresser, beautician, body piercer or tattooist in a salon or any other place, must ensure that the premises comply with the following:
- (a) basins, with a supply of running hot and cold potable water, must be available for the washing of hair and hands;
  - (b) lighting, ventilation, water and toilet facilities as prescribed in the National Building Regulations and Buildings Standards Act, 1977 (Act 103 of 1977) must be provided;
  - (c) shelves, counters, table tops or other fixtures on which instruments are placed must be constructed of impervious material that is easy to clean;
  - (d) adequate facilities for the storage of clothes, instruments and appliances must be provided;
  - (e) facilities for the disposal of waste water must be provided;
  - (f) the walls and floors must be constructed of materials that are easy to clean; and
  - (g) unless separated by a wall, the premises may not be used for the storage and preparation of food, or for sleeping.
- (2) Should the owner, occupier or person in charge of the premises upon which the business is carried on fail to comply with a provision in subsection (1), the municipality may act in terms of section 50 and 51.

## CHAPTER 8 WASTE MANAGEMENT

### *Part 1*

#### *General provisions regarding recovery and disposal of waste*

#### **33. Recovery and disposal of waste**

- (1) Waste must be recovered and disposed of –
  - (a) without endangering human health;
  - (b) without the use of processes or methods likely to harm the environment; and
  - (b) in a manner that does not create a municipal health nuisance;
- (2) A person who contravenes subsection (1) commits an offence.

### *Part 2*

#### *Hazardous Waste*

#### **34. Applicable legislation**

The municipality, taking cognizance of the provisions of the Environment Conservation Act, 1989 (Act No. 73 of 1989) and the Hazardous Substances Act, 1973 (Act 15 of 1973), and the regulations made under these Acts, adopts the provisions in this Part.

#### **35. Storage of hazardous waste**

- (1) An empty container in which hazardous waste such as, but not limited to, pesticides was stored is to be treated as waste, and –
  - (a) must be stored in such a manner that –
    - (i) no pollution of the environment occurs at any time;
    - (ii) no municipal health nuisance is created at any time;
  - (b) the date on which the container is stored must be clearly marked and visible for inspection on the container;
  - (c) while being stored on site, must be clearly marked or labelled with the words "Hazardous Waste";
  - (d) the owner or occupier of the land must fence off the storage area to prevent unauthorised access; and
  - (e) shall be dealt with as Class 6 waste as described in the Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste (Second Edition, 1998) as published by the Department of Water Affairs and Forestry and as amended from time to time.
- (2) A person who contravenes a provision of subsection (1)(a) to (d) commits an offence.

### *Part 3*

#### *Health Care Waste*

#### **36. Scope of application**

Compliance with the provisions of this Part is mandatory for all generators of health care waste and, where applicable, for all transporters and disposers of health care waste, and is mandatory at especially –

- (a) all health care facilities such as places or sites where professional health services are dispensed to human patients, including hospitals,

mobile and stationary clinics, sick bays such as, but not limited to old-age homes, day units, hospices, rehabilitation centres, consulting rooms of medical doctors, oral health practitioners, traditional healers, traditional surgeons, professional nurses, facilities for rendering midwifery services, free-standing operating theatres, pharmacies, veterinarian premises, tattoo parlours, premises where body piercing is done and all similar sites;

- (b) all pathological and microbiological laboratories or places where biological research is carried out, and the premises of blood transfusion services;
- (c) the facilities of all manufacturers and distributors of pharmaceutical products or vaccines;
- (d) all mortuaries and undertaker premises;
- (e) all veterinary consulting rooms, animal hospitals, treatment-stations, dog kennels and catteries; and
- (f) any private dwelling or household or any other premises where the environmental health risk constituted by the quantity and nature of health care waste generated is such that such health care waste should be handled in accordance with these regulations.

**37. Duties of generators, transporters and disposers of health care waste**

- (1) Subject to the provisions of the National Environmental Management Act, 1998, (Act 107 of 1998), and any other applicable legislation, every generator of health care waste and, where applicable, every transporter and disposer of health care waste must cause all such health care waste to be sorted, packed, contained, handled, stored, transported and disposed of in accordance with this Part.
- (2) The activities referred to in subsection (1) must be carried out in such way that the health care waste generated does not cause a municipal health nuisance or safety hazard for any handler thereof or any other person or the environment in general.
- (3) The responsible authority may, subject to the provisions of any provincial or national law, allow any person to dispose of health care waste in any other acceptable manner that ensures that such health care waste and method of disposal does not constitute a municipal health nuisance or a safety hazard for any handler thereof or any other person or the environment in general.
- (4) A person who intends to engage, on any plot or premises, in an activity which may cause health care waste to be generated must, prior to the generation of the health care waste inform the responsible authority by written notice of his or her intention, and the notice must contain:
  - (a) The composition, chemical or otherwise and nature of the health care waste;
  - (b) a description of the industrial process or trade giving rise to the health care waste;
  - (c) the estimated quantity of health care waste to be generated;
  - (d) the method of storage of the health care waste;
  - (e) the proposed duration of storage of the health care waste;
  - (f) the manner in which the health care waste will be collected;
  - (g) the manner in which and the disposal site at which the health care waste will be disposed of;

- (h) the identity of the licensee removing the health care waste; and
  - (i) the number of persons employed on the premises.
- (5) If so required by the municipality, the notice must be substantiated by an analysis certified by an appropriately qualified industrial chemist of the composition of the health care waste, and must contain any other information required by the municipality.
- (6) Upon receipt and evaluation of the notice the municipality shall by written notice to person require him or her to execute at his or her expense any of the following:
- (a) To dispose of the health care waste in the same manner as other solid waste;
  - (b) to store and dispose of the health care waste in refuse receptacles, using special containers or labelling as directed by the municipality;
  - (c) to transport the health care waste to a municipal disposal or processing facility as directed by the municipality, employing special containers and handling, and placing the health care waste in a specific area of the facility as directed by the facility operating plan;
  - (d) to cause the health care waste to be processed on the plot or premises of generation, thus rendering it non-hazardous;
  - (e) to take any other measures relative to transportation and disposal of the health care waste as determined by the municipality to be required to protect human health and the environment; or
  - (f) to pay an additional tariff for collection and disposal of the health care waste.
- (7) The person must notify the municipality in writing of any changes occurring with respect to any of the matters stipulated in subsection (4).
- (8) Where the health care waste is being generated as a result of activities which commenced prior to the commencement of this by-law, the person must notify the municipality within 6 months of the commencement of this by-law.
- (9) An owner or occupier of a plot or premises where health care waste is generated must provide periodic training, on proper health care waste handling procedures, to all employees who may come into contact with health care waste.
- (10) A person who contravenes subsection (1), (2), (4), (6), (7), (8) or (9) commits an offence.

### **38. Storage of health care waste**

- (1) Any person engaging in an activity which may generate health care waste must ensure that the health care waste generated on the premises is kept and stored thereon until it is collected from the premises.
- (2) (a) Perishable health care waste must be frozen and the freezing equipment must be connected to a back-up generation system.
- (b) A health care waste storage area must –
- (i) be vermin-proof, insect-proof, and rodent-proof;
  - (ii) have an easily cleanable floor and wall finishing and general construction;

- (iii) be totally enclosed and provided with adequate signage indicating such area;
  - (iv) adequately ventilated and lighted; and
  - (v) be kept locked and be accessible to authorised persons only.
- (c) All health care waste must be stored in a health care waste storage area until it is loaded or removed for final disposal.
- (d) On-site spills must be cleaned up immediately.
- (e) All interior surfaces of storage areas must be meticulously disinfected and cleaned on a daily basis.
- (3) Provision must be made for unrefrigerated health care waste to be removed on weekends and public holidays.
- (4) Subject to the provisions of sub-section (6) health care waste must, prior to final disposal at a municipal disposal or processing facility, be sterilized using one of the following methods:
- (a) autoclave;
  - (b) microwave;
  - (c) chemical treatment; or
  - (d) Incineration.
- (5) Sterilization of health care waste may be performed on the premises where the health care waste was generated or at an off-site location.
- (6) Health care waste must, prior to disposal, be placed in a colour coded heavy duty plastic bag or other suitable colour coded container as follows:
- (a) Health care waste which has not been sterilized and rendered non-infectious must be placed in a red heavy duty plastic bag at the point of generation or disposed of at disposal site designated for health care waste or processing facility in an unsterilized condition;
  - (b) health care waste which has been sterilized by autoclave, microwave, chemical or other non-burning method, must be placed in a yellow heavy duty plastic bag;
  - (c) cytotoxic or genotoxic pharmaceutical health care waste and associated contaminated materials such as, but not limited to syringes, tubing, containers, preparation materials, vials and ampoules, must be discarded into a container which is labelled cytotoxic waste or genotoxic waste; and
  - (d) sharp objects such as, but not limited to needles and broken glass, contaminated with cytotoxins must be placed into a rigid, sealed, plastic container which is labelled cytotoxic sharps, and provision must be made in this regard for the safe discarding of the longest Trocar needle.
- (7) The above requirements for colour coded containers must be strictly adhered to for all movement and transportation of health care waste either on the premises of generation or in transit to an off-site sterilization or disposal facility.
- (8) A person who contravenes a provision of this section commits an offence.

**39. Transport of health care waste**

- (1) Only approved transporters may transport health care waste and must do so in accordance with the requirements and provisions of the responsible local municipality.
- (2) (a) The loading compartments of transport vehicles for health care waste must be lockable and must comply with the following requirements:
  - (i) The compartment must be thermally insulated and capable of maintaining a refrigerated transport temperature not exceeding 4°C;
  - (ii) the interior panel construction must be so tightly joined as to ensure a removable liquid seal and airtight seal;
  - (iii) the interior surfaces must be painted white with a durable duco or enamel paint or have a finish approved by the municipality;
  - (iv) there must be a threshold of at least 100 mm at the doors to prevent leakages spilling outside; and
  - (v) the compartment must be equipped with approved Spilikits that are regularly checked and replenished.
- (b) The transport vehicle must be manned by a team adequately trained in the effective use of the Spilikits and clean-up procedures.
- (c) Every loading compartment must be disinfected and chemically cleaned on a daily basis.
- (3) A licensee licensed to collect and dispose of health care waste, must inform the municipality at those intervals the municipality may stipulate in the licence or elsewhere, about
  - (a) the removal of health care waste;
  - (b) the date of such removal, the quantity;
  - (c) the composition of the health care waste removed; and
  - (d) the facility at which the health care waste has been disposed.
- (4) A person who contravenes a provision of this section commits an offence.

**40. Disposal facility and incineration**

- (1) An approved transporter must dispose of the health care waste at an approved waste disposal facility for that purpose.
- (2) The incinerator and incineration process must comply with the prescriptions of all relevant legislation, such as the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), the Hazardous Substances Act, 1973 (Act No. 15 of 1973), and the Environment Conservation Act, 1989 (Act No. 73 of 1989), in order to deal with health care waste having a wide variation in burning characteristics, ranging from highly volatile and high calorific-value plastics to high water-content material such as placentae.
- (3) A person who contravenes subsection (1) or operates an incinerator or undertakes an incineration process in contravention of subsection (2) commits an offence.

CHAPTER 9  
WATER AND SANITATION

**41. Applicable legislation and enforcement**

- (1) The municipality, taking cognisance of the provisions of the National Water Act, 1998 (Act 36 of 1998), adopts the provisions in this Chapter.
- (2) The municipality, taking cognisance of the provisions of the Water Services Act, 108 of 1997 and of the Regulations relating to Compulsory National Standards and Measures to Conserve Water published under GN R509 dated 8 June 2001, adopts the provisions in this Chapter.
- (3) Within the powers conferred upon the municipality by the National Health Act, 2003 (Act No. 61 of 2003), the municipality may act in terms of section 50 and 51 where the non-compliance with any of the provisions of the Act and Regulations contemplated in sub-sections (1) and (2) constitutes a municipal health nuisance.

**42. Duties and prohibitions**

- (1) An owner, occupier or user of land or premises must –
  - (a) keep every water passage open and free of obstruction from matter which may impede the flow of water or effluent so as to prevent the creation of a municipal health nuisance.
  - (b) construct a bund wall around a tank, or group of tanks, that contain a substance that can create a municipal health nuisance, of a size that contains the volume of the largest tank in the event of any unlawful or accidental discharge from the tank or group of tanks;
  - (c) clean any industrial surface area so as to prevent the pollution of storm water which may result in adverse impacts on the quality of any surface and ground water;
  - (d) ensure that a dam, conduit or channel that is used for the containment of waste water has a free board of at least 0.5 metres above the highest level of precipitation which could be expected within a period of 24 hours with an average frequency of recurrence of once in 100 years; and
  - (e) in the case of feedlots and intensive animal feeding systems, seal or cover conservancy lagoons or take the steps prescribed by the municipality to prevent fly breeding.
- (2) An owner or occupier of land or premises may not –
  - (a) locate any disposal site within the one in one hundred year flood line of any water resource; or
  - (b) use coal, coal discard, carbonaceous material or any other material for the construction of any slurry, evaporation or catchments dam, or any embankment, road or railway in a way likely to create a municipal health nuisance.
- (3) No person may without the prior written approval of the municipality dump any sewerage sludge within the area of jurisdiction of the municipality.
- (4) A person who contravenes a provision of subsection (1), (2) or (3) commits an offence.

## CHAPTER 10 DISPOSAL OF CORPSES AND DISTURBANCE OF MORTAL REMAINS

### **43. Disposal of corpses**

- (1) No person may store or inter a corpse in such a manner that it constitutes a municipal health nuisance.
- (2) A person who contravenes subsection (1) commits an offence.

### **44. Disturbance of mortal remains**

The provisions of any By-law relating to Cemeteries of any local municipality within the jurisdiction of the municipality will apply to the disturbance of mortal remains in a cemetery.

## CHAPTER 11 PREMISES FOR DRY-CLEANING AND LAUNDRY BUSINESSES AND DEPOTS

### **45. Premises for dry-cleaning or laundry businesses**

- (1) No person may conduct a dry-cleaning or laundry business on premises that do not comply with the following requirements:
  - (a) a work-room or area used for housing dry-cleaning machines, washing-machines, ironing boards, presses and other fixed or movable equipment, with a minimum unobstructed floor area of 2,5 m<sup>2</sup> per person employed on the premises, must be provided;
  - (b) separate areas for marking clean and dirty articles must be provided with -
    - (i) tables with an impervious surface;
    - (ii) washable containers for dirty articles; and
    - (iii) hanging rails and shelves constructed of an impervious material in the area for marking clean articles;
  - (c) a separate room or area with separate designated counters, with impervious surfaces, must be provided for the receipt and dispatch of articles;
  - (d) a store-room or facility for the storage of packing material and other articles must be provided and equipped with adequate packing shelves of which the lowest shelf must be at least 250 mm above floor level;
  - (e) separate change-rooms for males and females, where five or more persons of the same sex are employed, must be provided containing -
    - (i) a metal locker for every employee;
    - (ii) a wash-hand basin provided with a supply of running hot and cold potable water; and
    - (iii) a supply of soap and disposable towels at every wash-hand basin;
  - (f) if no change-room has been provided in terms of paragraph (e)
    - (i) a wash hand basin with a supply of potable hot and cold water, must be provided in an accessible position; and
    - (ii) a metal locker must be provided for every employee in the work area;
  - (g) a tea kitchen with a single-basin stainless steel sink, with a supply of running hot and cold potable water, must be provided;

- (h) separate toilets for males and females must be provided which comply with the provisions of the National Building Regulations and Building Standards Act;
- (i) every toilet and change-room must be clearly gender designated;
- (j) all internal walls must be constructed of an impervious material, brought to a smooth finish and painted with a light-coloured washable paint;
- (k) all ceilings must be dust-proof, smoothly finished, and painted with a light-coloured washable paint;
- (l) all floor surfaces must be constructed of cement or some other adequate impervious material, brought to a smooth finish and properly drained;
- (m) the minimum height from floor to ceiling of any room or area must be 2,4 metres;
- (n) adequate lighting and ventilation, as prescribed by the National Building Regulations and Building Standards Act must be provided;
- (o) all machinery and equipment must be equipped with adequate suction fans to remove any noxious gas, steam and hot air from any room and to release it in the open air in an adequate manner;
- (p) all machinery and equipment must be placed so that there is free access to all areas around and underneath each machine or item of equipment, to enable those areas to be adequately cleansed; and
- (q) a separate pre-rinsing area must be provided on any premises where nappies are laundered.

(2) Any person who contravenes a provision of subsection (1) commits an offence.

**46. Premises for dry-cleaning or laundry receiving depots**

(1) No person may operate a dry-cleaning or laundry receiving depot on premises which do not comply with the following requirements:

- (a) A separate room or area with a minimum width of two metres must be provided for the receipt and dispatch of articles;
- (b) fifty percent of the floor space of the room referred to in paragraph (a) must be unobstructed;
- (c) a wash-hand basin with a supply of running potable water must be provided;
- (d) an adequate supply of soap and disposable towels must be provided at every wash-hand basin;
- (e) all internal wall and ceiling surfaces must be constructed of an impervious material, brought to a smooth finish and painted with a light-coloured washable paint;
- (f) all floor surfaces must be constructed of cement or other impervious material, brought to a smooth finish;
- (g) lighting and cross-ventilation, as prescribed by the National Building Regulations and Building Standards Act, must be provided;
- (h) washable containers for storing dirty articles must be provided;

- (i) quantities of hanging rails or impervious shelves for the storage of clean articles must be provided;
  - (j) designated counters, with impervious surfaces, must be provided separately for the receipt and dispatch of dirty and clean articles;
  - (k) a metal locker must be provided for every person employed in the receiving depot.
- (2) Any person who contravenes a provision of subsection (1) commits an offence.

**47. Premises for coin-operated laundries**

- (1) No person may operate a coin-operated laundry on premises that do not comply with the following requirements:
- (a) separate toilet and hand washing facilities for the different sexes, as prescribed in the National Building Regulations and Building Standards Act, must be provided;
  - (b) an area must be provided where ironing is done on the premises; and
  - (c) any machine on the premises must be installed in accordance with any applicable law.
- (2) Any person who contravenes a provision of subsection (1) commits an offence.

**48. General requirements for dry-cleaning and laundry businesses**

- (1) Any person conducting a dry-cleaning or laundry business or in charge of premises on which a dry-cleaning, laundry or receiving depot exists, must –
- (a) keep the premises, all fittings, equipment, appliances, machinery, containers and business vehicles in a clean, hygienic and good condition at all times;
  - (b) separate dirty articles from clean articles at all times, including when in transit;
  - (c) use a change-room solely for changing;
  - (d) ensure that every person who handles clean or dirty articles wears adequate protective clothing at all times;
  - (e) keep protective clothing in a clean and sound condition at all times;
  - (f) store protective clothing in a locker when it is not being worn;
  - (g) affix the name and business address, in clear lettering, to the outside of any business vehicle;
  - (h) ensure that the premises are not directly connected to any food premises, new clothing shop, hairdresser or any other area from which contamination might occur;
  - (i) comply with the requirements of the following legislation at all times:
    - (i) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993); and
    - (ii) the Air Quality Act, 2004 (Act No. 39 of 2004);
  - (j) place all piping in the building, not chased into the walls, at least 100 mm away from all walls or floors and comply with the provisions of the National Building Regulations and Building Standards Act;
  - (k) insulate all steam piping with an adequate material; and

- (l) dispose of all waste water in an approved manner.
- (2) Any person who contravenes a provision of subsection (1) commits an offence.

## CHAPTER 12 ENFORCEMENT

### **49. Environmental health practitioner**

Sections 80 to 89 of the National Health Act, 2003 (Act 61 of 2003) apply, with the necessary changes, to the appointment, responsibilities and powers of the environmental health practitioner, and offences relating to such practitioner.

### **50. Notice of compliance and representations**

- (1) Where an environmental health practitioner has reasonable grounds to believe that a person fails to comply with a requirement relating to premises, he or she may serve a notice of compliance on the person, which notice must state –
  - (a) the name and residential or postal address of the person;
  - (b) the requirement which has not been complied with;
  - (c) that the person must within a specified period take measures to comply with the notice and to complete the measures before a specified date; and
  - (d) that the person may within 14 days make written representations in the form of a sworn statement or affirmation to the municipality at a specified place.
- (2) The municipality, when considering any measure or period envisaged in subsection (1)(c) or (d), must have regard to the principles and objectives of this by-law, the nature of the non-compliance, and other relevant factors.
- (3) Where a person does not make representations in terms of subsection (1)(e), and the person fails to take the measures before the date contemplated in subsection (1)(d), he or she commits an offence, and the municipality may, irrespective of any fines which may be imposed under section 59, act in terms of subsection (5).
- (4)
  - (a) Representations not lodged within the time contemplated in subsection (1)(e) will not be considered, except where the person has shown good cause and the municipality condones the late lodging of the representations.
  - (b) The municipality must consider the timely representations and any response thereto by the environmental health practitioner.
  - (c) The municipality may, on its own volition, conduct any further investigations to verify the facts if necessary, and the results of the investigation must be made available to the person making the representation, who must be given an opportunity of making a further response if he or she so wishes, and the municipality must also consider the further response.
  - (d) The municipality must, after consideration of the representations and any response and further response make an order in writing and serve a copy of it on the person, which order must confirm, in whole or in part, alter, or set aside the notice of compliance, and where the notice of compliance is confirmed, in whole or in

part, or altered, the municipality must inform the person that he or she must, within the period specified in the order, discharge the obligations set out in the order and that failure to do so constitutes an offence.

- (e) Where a person fails to discharge the obligations contemplated in paragraph (d), he or she commits an offence and the municipality may, irrespective of any fines which may be imposed under section 59, act in terms of subsection (5).
- (5) The municipality may take such measures as it deems necessary to remedy the situation, and the cost thereof must be paid to the municipality in accordance with section 54 or the municipality may inform the local municipality of the failure to comply with a notice issued in terms of subsection (1) and recommend steps to be taken towards rectification.

#### **51. Prohibition notice**

- (1) An environmental health practitioner may, after inspecting premises, serve a prohibition notice prohibiting the premises from being used for specified purposes and require measures to be taken to ensure that this occurs, on one or more of the following persons:
  - (a) The owner or occupier of the premises if the municipality reasonably believes that the premises are being used for a purpose or in a manner that is causing a municipal health nuisance;
  - (b) any person who is carrying on an activity or using a premises for a purpose or in a manner that the municipality reasonably believes is causing a municipal health nuisance; or
  - (b) a person on whom a compliance notice was served if the municipality reasonably believes that that person has not complied with the compliance notice.
- (2) The municipality must give the person on whom he or she intends serving a prohibition notice a reasonable opportunity to make representations before serving the notice unless the municipality reasonably believes that the delay in doing so would significantly compromise municipal health, in which case the person on whom a prohibition notice is served must be given reasonable opportunity to make representations why it should be withdrawn.
- (3) A prohibition notice must state –
  - (a) the reasons for serving the notice;
  - (b) whether or not the municipality will withdraw the notice if certain measures are taken, and if so, the measures that must be taken;
  - (c) the possible consequences of failing to comply with the notice; and
  - (e) how to appeal against the notice.
- (4) Unless a prohibition notice provides otherwise, it comes into effect when it is served under subsection (1) and remains in force until it is withdrawn.
- (5) The environmental health practitioner must as soon as possible affix a copy of the notice in a conspicuous position on the premises.
- (6) It is a defence for anyone charged with failing to comply with a prohibition notice if he or she can prove that –

- (a) he or she did not know of the existence of the prohibition order and could not reasonably be expected to have known of its existence; and
  - (b) he or she had complied with the prohibition notice within 48 hours of the time that the notice was affixed to the premises in terms of subsection (5).
- (7) A person who fails to comply with any order or condition contained in a prohibition notice issued in terms of subsection (1) commits an offence.

**52. Withdrawal of prohibition notice**

- (1) The municipality must, within 48 hours of receiving a written request for the withdrawal of a prohibition contained in a prohibition notice, carry out an investigation of the land or premises.
- (2) After completing the investigation, the municipality must inform, in writing, the person on whom the prohibition notice was served or that person's agent whether or not the prohibition has been removed or the prohibition order withdrawn.
- (3) The municipality may charge the owner or occupier of the land or premises where an investigation is carried out in terms of subsection (1), a prescribed fee for undertaking the investigation.

**53. Municipal remedial work**

- (1) The municipality may enter any premises and do anything on the premises that it reasonably considers necessary –
  - (a) to ensure compliance with this by-law or with a compliance notice or prohibition notice;
  - (b) to eliminate or reduce a municipal health nuisance.
- (2) The municipality may conduct inspections of premises –
  - (a) on a routine basis where the environmental health practitioner reasonably believes that the premises are being used for a purpose contemplated in this by-law, and the purpose of the inspection is to determine whether or not the use complies with the provisions of this by-law;
  - (c) where a compliance notice relating to the premises has been issued in terms of section 50, and the purpose of the inspection is to determine whether or not the notice has been complied with;
  - (d) where the owner or occupier of the premises has failed to comply with a compliance notice that was issued in terms of section 50, or a prohibition notice that was issued in terms of section 51, directing that relevant measures be taken; or
  - (e) where the environmental health practitioner has reasonable grounds to believe that a municipal health nuisance, which is likely to endanger municipal health, exists on the premises.
- (3) Before inspecting any premises or commencing any work in terms of this section, persons undertaking the inspection or commencing the work must identify themselves and explain their authority to the person apparently in control of the premises or the person who gave them permission to enter.
- (4) Any inspection undertaken or work commenced in terms of this section must be carried out at a reasonable time, taking into account the circumstances of the specific situation.

- (5) Any inspection conducted or work undertaken in terms of this section must be conducted with strict regard to decency and order, including –
- (a) a person's right to, respect for and protection of his or her dignity;
  - (b) the right of a person to freedom and security; and
  - (c) the right of a person to his or her personal privacy.

#### **54. Costs**

- (1) Should a person fail to take the measures required of him or her by a notice of compliance contemplated in section 50, the municipality may, subject to subsection (3) recover, as a debt, and in accordance with municipality's debt collection regulations, all costs incurred as a result of it acting in terms of section 53(1) from that person and any or all of the following persons:
- (a) the owner of the land, building or premises;
  - (b) the person who committed the specific offence; or
  - (b) the person or occupier in control of the land, building or premises or any person who has or had a right to use the land at the time when the situation came about.
- (2) The costs recovered must be reasonable and may include, without being limited to, costs relating to labour, water, equipment, administrative and overhead costs incurred by the municipality.
- (3) If more than one person is liable for costs incurred, the liability must be apportioned as agreed among the persons concerned according to the degree to which each was responsible for the emergency resulting from their respective failures to take the required measures.

#### **55. Norms, standards and guidelines**

- (1) The municipality may determine and publish norms, standards and guidelines which describe appropriate measures that can be taken to eliminate the risk of any municipal health nuisance occurring, continuing or recurring, or to reduce that risk to an acceptable level.
- (2) The norms, standards and guidelines contemplated in sub-section (1) may differentiate between communities, geographical areas and different kinds of premises.

### CHAPTER 13 MISCELLANEOUS PROVISIONS

#### **56. Presumptions**

- (1) When an employee of a person in the course of his or her employment performs any act or is guilty of an omission which constitutes an offence under this by-law, the employer is deemed also to have performed the act or to be guilty of the omission and the employer is liable on conviction to the penalties referred to in section 59, unless the employer proves to the satisfaction of the Court that –
- (a) in performing the act or being guilty of the omission, the employee was acting without the employer's knowledge or permission;
  - (b) all reasonable steps were taken by the employer to prevent the act or omission in question; and

- (c) it was not within the scope of the authority or the course of the employment of the employee to perform an act of the kind in question.
- (2) The fact that an employer issued instructions forbidding any act or omission of the kind referred to in subsection (1) is not in itself sufficient proof that he or she took all steps referred to in paragraph (1)(b).
- (3) When an employer is by virtue of the provisions of subsection (1) liable for any act or omission of his or her employee, that employee shall also be liable to prosecution for the offence.
- (4) In any prosecution for an offence under this by-law an allegation in the charge concerned that any place was situated in a street or public place or within a particular area or was a place of a specified kind, shall be presumed to be correct unless the contrary is proved.
- (5) In any prosecution for an offence under this by-law the accused is deemed to know the provisions of this by-law and to know that the offence with which he or she is charged is a contravention thereof unless he or she proves to the satisfaction of the Court that he or she did not have and could not reasonably be expected to have that knowledge.

**57. Authentication and service of notices and other documents**

- (1) A notice issued by the municipality in terms of this by-law is deemed to be duly issued if it is signed by the environmental health practitioner.
- (2) Any notice or other document that is served on a person in terms of this by-law is regarded as having been duly served –
  - (a) when it has been delivered to that person personally;
  - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 years;
  - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained;
  - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
  - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or business premises to which it relates;
  - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate; or
  - (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (3) Service of a copy is deemed to be service of the original.
- (4) When any notice or other document is served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.

**58. Appeal**

A person whose rights are affected by a decision of the municipality in terms of this by-law may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000.

**59. Penalties**

A person who has committed an offence in terms of this by-law is, on conviction, and subject to penalties prescribed in any other law, liable to a fine, or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment and a further amount equal to any costs and expenses found by the court to have been reasonably incurred by the municipality as a result of such contravention, or remedial work done to ensure compliance with this by-law to eliminate or reduce a municipal health nuisance.

**60. Liaison forums in community**

(1) The municipality may establish liaison forums in a community for the purposes of -

- (a) encouraging a local community to participate in the implementation, development and enforcement of this by-law; and
- (b) promoting the achievement of a safe and healthy environment.

(2) The forums contemplated in sub-section (1) may consist of-

- (a) a member or members of an interest group or an affected person in the spirit of section 2(4)(f) to (h) of the National Environmental Management Act, 1998 (Act 107 of 1998).
- (b) a member or members of a community in whose immediate area a municipal health nuisance occurs or may occur;
- (c) a designated official or officials of the municipality; and
- (d) the councillor responsible for municipal health.

(3) The municipality may, in the implementation and enforcement of this by-law, -

- (a) request the input of a forum;
- (b) employ any skills or capacity that may exist in such a

forum.

(4) A forum, or a person or persons contemplated in sub-section 2, may, on own initiative, having regard to the provisions of section 31 of the National Environmental Management Act, 1998 (Act 107 of 1998), submit an input to the municipality for consideration.

**61. Exemptions**

(1) Any person may by means of a written application, in which the reasons are given in full, apply to the municipality for exemption from any provision of this by-law.

(2) The municipality may –

- (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;

- (b) alter or cancel any exemption or condition in an exemption; or
  - (c) refuse to grant an exemption.
- (3) In order to consider an application in terms of sub-section (1), the municipality may obtain the input or comments of the owners or occupants of surrounding premises.
- (4) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (5) If any condition of an exemption is not complied with, the exemption lapses immediately.

**62. Repeal of by-laws**

The by-laws previously promulgated by the municipality or any of the disestablished municipalities now incorporated into municipality, in so far as it relates to any matter provided for in this by-law; are hereby repealed.

**63. Short title and commencement**

This by-law may be cited as the Frances Baard District Municipality: Municipal Health By-law, and shall come into operation on the date of publication thereof in the Provincial Gazette.





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