

DEPARTMENT OF TRADITIONAL AND LOCAL GOVERNMENT AFFAIRS

PROVINCIAL GOVERNMENT NOTICE

No. , 2004

I, under powers vested in me by section 14(2) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and after having consulted the Minister of Provincial and Local Government Affairs and Organized Local Government in the Province, hereby make the standard By-laws contained in the Schedule hereto.

Signed at _____ on this ____ day of _____ Two Thousand and Five.

M MABUYAKHULU

Member of the Executive Council of the Province of KwaZulu-Natal
responsible for local government

ENVIRONMENTAL HEALTH BY-LAWS

Be it enacted by the Council of the Municipality, in terms of Section 156 of the Republic of South Africa Act No. 108 of 1996, read with section 11 of the Local Government: Municipal Systems Act No. 32 of 2000, as follows:

INDEX

CHAPTER 1 : DEFINITIONS.....	2
Section 1 : Definitions.....	2
CHAPTER 2 : PUBLIC HEALTH HAZARDS.....	4
Section 2 : Prohibition on causing a public health hazard.....	4
Section 3 : Duty to report.....	5
CHAPTER 3 : PUBLIC HEALTH NUISANCES.....	5
Section 4 : Prohibition on causing a public health nuisance.....	5
Section 5 : General nuisances.....	5
Section 6 : Pest control.....	6
CHAPTER 4 : POTENTIALLY HAZARDOUS USES OF PREMISES.....	6
Section 7 : Duty to list potentially hazardous uses.....	6
Section 8 : Scheduled uses.....	6
Section 9 : Exemption certificate.....	7
Section 10 : Public health permits.....	7
Section 11 : Application procedure.....	8
Section 12 : General terms applicable to permits and certificates.....	8
Section 13 : Suspension, cancellation and amendment of permits and of exemption certificates.....	9
CHAPTER 5 : IMPLEMENTATION AND ENFORCEMENT.....	10
Section 14 : Appointment and identification of environmental health officers.....	10
Section 15 : General powers of an environmental health officer.....	10
Section 16 : Compliance notices.....	11
Section 17 : Prohibition notice.....	12

Section 18 : Withdrawal of prohibition notice.....	13
Section 19 : Municipal remedial work.....	13
CHAPTER 6 : APPEALS.....	14
Section 20 : Appeals.....	14
CHAPTER 7 : GENERAL.....	14
Section 21 : Offences.....	14
Section 22 : Repeal of By-laws.....	15
Section 23 : Short title and commencement.....	15
SCHEDULE.....	16
Section 1 : Definitions.....	16
Section 2 : Permit requirements.....	17
Section 3 : Requirements for premises.....	17
Section 4 : Duties of a scheduled business person.....	19

CHAPTER 1: DEFINITIONS

Definitions

1. In these by-laws, unless the context indicates otherwise –

"authorised official" means an authorised official authorised by the Council for the purposes of these bylaws to perform and exercise any or all of the functions in terms of these by-laws or the provisions of any other law;

"compliance notice" means a notice issued in terms of section 16 to comply with these by-laws or with a permit issued in terms of these by-laws;

"Council" means the Council of the Municipality;

"environmental health officer" means an official appointed by the Council, and who is duly registered as an environmental health officer or environmental health practitioner with the Health Professions Council of South Africa;

"municipal manager" means a person appointed as such by the Council in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"occupier", in relation to any premises, means any person -

- (a) occupying the premises;
- (b) leasing the premises; or
- (c) who is not occupying the premises but is entitled to do so;

“owner”, in relation to any premises, means -

- (a) the person in whose name the title to the premises is registered; or
- (b) if the person referred to in (a) is dead, insolvent, mentally ill, a minor or under any legal disability, the executor, guardian or other person who is legally responsible for administering that person’s estate;

"permit" means a public health permit granted by the Council in terms of the section 10;

“person” means a natural person or a juristic person, and includes an organ of state;

“pest” means any animal that may create a public health hazard or public health nuisance if it is present in significant numbers and without limitation, includes rats, mice, flies, mosquitoes and cockroaches;

"premises" means -

- (a) any land without any buildings or other structures on it;
- (b) any building or other structure and the land on which it is situated; or
- (c) any vessel, vehicle or movable structure that is used for a scheduled use;

“prescribed fee” means a fee determined by the Council by resolution;

“prohibition notice” means a notice issued in terms of section 17;

“public health” means the mental and physical health and well-being of people in the Council's area;

“public health hazard” means any actual threat to public health, and without limitation, includes –

- (a) the circumstances referred to in section 2(3);
- (b) unsanitary conditions;
- (c) circumstances that make it easier for a communicable disease to spread;
- (d) circumstances that make food or drink, including water for domestic consumption, unhygienic or unsafe to eat or drink; and
- (e) circumstances that allow pests to infest any place where they may affect public health;

“public health nuisance” means the use of any premises or place in a manner that

creates conditions that significantly increase the risk of a public health hazard occurring or that compromises any aspect of the public health to an extent that is more than trivial or insignificant, and without limitation, includes those circumstances in which a public health nuisance is considered to exist in terms of section 5; and

“public place” means any road, street, thoroughfare, bridge, overhead bridge, subway, foot pavement, footpath, sidewalk, lane square, open space, garden park, path, bus or taxi rank, servitude or enclosed space vested in a Council and includes any road, place or thoroughfare which is in the undisturbed use of the public or which the public have the right to use.

CHAPTER 2: PUBLIC HEALTH HAZARDS

Prohibition on causing a public health hazard

2.(1) No person may create a public health hazard.

(2) Every owner or occupier of premises must ensure that a public health hazard does not occur on the premises.

(3) An owner or occupier of premises creates a public health hazard if –

- (a) the premises are infested with pests or pests are breeding in significant numbers on the premises;
- (b) there are conditions on the premises that are conducive to the spread of a communicable disease;
- (c) there are unsanitary conditions in any part of the premises; or
- (d) any water supply for domestic consumption on the premises is unsafe for human consumption.

(4) Any person that contravenes or fails to comply with subsections (1) or (2) commits an offence.

Duty to report

3.(1) The owner or occupier of premises who knows of a public health hazard on the premises must within 24 hours of becoming aware of its existence –

- (a) eliminate the public health hazard; or
- (b) if the owner or occupier is unable to comply with subsection (a), take reasonable steps to reduce the risk to public health and report the existence of the public health hazard to the Council.

(2) An owner or occupier who does not comply with subsection (1) commits an offence.

CHAPTER 3: PUBLIC HEALTH NUISANCES

Prohibition on causing a public health nuisance

4.(1) No person may cause a public health nuisance.

(2) Every owner or occupier of premises must ensure that a public health nuisance does not arise on the premises.

General nuisances

5. An owner or occupier of premises creates a public health nuisance where –

(1) any stream, pool, marsh, ditch, gutter, watercourse, cistern, urinal, drain, sewer, septic tank, long drop, slop tank, ash heap or dung heap is so foul or in such a state or so situated or constructed as to be offensive or to be injurious or dangerous to the public health;

(2) any stable, kraal, shed, run or other structure used for the keeping of animals or birds is so constructed, situated, used or kept as to be offensive or to be injurious or dangerous to health;

(3) any accumulation of refuse, offal, manure or other matter is offensive or is injurious or dangerous to health;

(4) any factory, industrial or business premises is so overcrowded, inadequately lit or ventilated as to be injurious or dangerous to the health of those employed therein or thereon; and

(5) any factory, industrial or business premises causes or gives rise to smells or effluvia which are offensive or which are injurious or dangerous to health.

Pest control

6. An owner or occupier of premises creates a public health nuisance where -

(1) waste or other material is left or kept in a manner that attracts rodents or other pests to the premises; or

(2) flies or mosquitoes are attracted to, or breeding , in significant numbers on the premises;

CHAPTER 4: POTENTIALLY HAZARDOUS USES OF PREMISES

Duty to list potentially hazardous uses

7. The Council may list any use of premises, in a schedule to these by-laws, which has caused, or is likely to cause, a public health hazard or to create a public health nuisance

unless reasonable measures are taken to avoid the risk or to reduce it to an acceptable level and Council must prescribe measures that must be taken to avoid the risk or reduce it to a level acceptable to the Council.

Scheduled uses

8. Any person who uses premises in a manner or for a purpose listed in the Schedule to these by-laws must –

- (1) comply with each of the provisions set out in the Schedule relating to that use unless that person has been granted an exemption under section 9 from complying with any provision; and
- (2) obtain a permit under section 10 before commencing the use and must comply with the terms and conditions of the permit.

Exemption certificate

9. (1) Any person who wishes to use premises in a manner or for a purpose listed in the Schedule to these by-laws, but who wishes to be exempted from complying with one or more of the requirements of the Schedule, may apply to the Council for an exemption certificate.

- (2) The Council may grant an exemption certificate, with or without conditions, if an environmental health officer is satisfied that –
 - (a) the measures taken to avoid or reduce the risk to public health arising from the scheduled use are equivalent to or better than the measures required by the relevant schedule; and
 - (b) the scheduled use for which the exemption is required is not likely to cause a public health hazard or a public health nuisance.

Public health permits

10.(1) Any person who wishes to use premises in a manner or for a purpose listed in the Schedule to these by-laws, must apply in writing to the Council in accordance with section 11 for a public health permit.

- (2) The Council may issue a public health permit to the owner or occupier of any premises if an environmental health officer is satisfied that the use for which the permit is required is not likely to cause a public health hazard or a public health nuisance.
- (3) A public health permit –
 - (a) must be issued subject to conditions aimed at reducing the risk to public

- health created by the scheduled use, to a level acceptable to the Council; and
- (b) may exempt the permit holder for complying with one or more of the provisions of the relevant schedule, if the person authorised to issue the permit reasonably believes that the permit requires the permit holder to take measures to avoid or reduce the risk to public health arising from the activity that are equivalent to, or better than, the measures required by the relevant schedule.

Application procedure

11.(1) Any person that wants to obtain a permit or an exemption certificate must apply to the Council in writing in a form stipulated by the Council, prior to undertaking the relevant scheduled use.

- (2) When the Council receives an application for a permit or an exemption certificate it must ensure that the relevant premises are inspected by an environmental health officer as soon as reasonably possible.
- (3) Before deciding whether or not to approve an application referred to in subsection (1), the Council –
 - (a) must ensure that any persons in the vicinity of the premises whose health or wellbeing may be affected if the premises are used for a scheduled use, have been consulted and have had an opportunity to make representations; and
 - (b) may request the applicant to provide any further information which the Council considers relevant to enable him or her to make a properly informed decision.

General terms applicable to permits and certificates

12.(1) A permit or an exemption certificate –

- (a) is not transferable from one person to another; and
- (b) applies only to the premises specified in the permit or certificate.

(2) Every permit or exemption certificate –

- (a) must specify the address and other relevant details regarding the location of the premises concerned;
- (b) must describe the premises concerned;
- (c) must describe the activity concerned;
- (d) may specify terms and conditions; and
- (e) must indicate when it expires.

- (3) The Council may charge applicants a prescribed fee for considering and granting the permit or exemption certificate.
- (4) The Council may refuse to consider an application until it has been provided with the information that it reasonably requires to make an informed decision and until the prescribed fee (if any) has been paid.

Suspension, cancellation and amendment of permits and of exemption certificates

13.(1) An environmental health officer may by written notice to the holder of a permit or exemption certificate, suspend, amend or cancel the permit or certificate.

- (2) An environmental health officer may suspend or cancel a permit or exemption certificate with immediate effect if –
 - (a) the environmental health officer reasonably believes that it is urgently necessary to do so to eliminate or to reduce a significant risk to public health posed by a public health hazard or a public health nuisance; and
 - (b) the holder of the permit or certificate has failed to comply with a compliance notice that states that the permit or certificate may be suspended or cancelled without further notice if the holder fails to comply with the compliance notice.
- (3) An environmental health officer may amend a permit or exemption certificate by endorsing the permit or certificate or by written notice to the holder, if the environmental health officer reasonably believes that it is necessary to do so to protect public health or to take account of changed circumstances since the permit or exemption certificate was issued.

CHAPTER 5: IMPLEMENTATION AND ENFORCEMENT

Appointment and identification of environmental health officers

- 14.(1) The Council must issue an identity card to each environmental health officer.
 - (2) The identity card must –
 - (a) contain a recent photograph of the environmental health officer;
 - (b) be signed by the environmental health officer; and
 - (c) identify the person as an environmental health officer.
 - (3) The environmental health officer must display his or her identity card so that it is clearly visible or produce it at the request of any person in relation to whom the environmental health officer is exercising a power under these by-laws.

General powers of an environmental health officer

15.(1) An environmental health officer may, for the purposes of implementing or administering any power or duty under these by-laws –

- (a) exercise any power afforded to such officer in terms of these by-laws or any other applicable legislation;
- (b) issue a compliance notice in terms of section 16 requiring any person to comply with the provisions of these by-laws;
- (c) issue a prohibition notice in terms of section 17 prohibiting any person from conducting an activity;
- (d) undertake measures in terms of section 19 to remove, reduce and/or minimise any public health nuisance;
- (e) cancel, suspend or amend any permit or exemption certificate in terms of section 13 or
- (f) enter and inspect premises and for this purpose may-
 - (i) question any person on the premises;
 - (ii) take any sample that the environmental health officer considers necessary for examination or analysis;
 - (iii) monitor and take readings or make measurements; and
 - (iv) take photos or make audio-visual recordings of anything or any person, process, action or condition on or regarding any premises.

(2) An environmental health officer who removes anything from any premises being inspected must –

- (a) issue a receipt for it to the owner, occupier or person apparently in control of the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

Compliance notices

16.(1) If an environmental health officer, after inspecting premises, reasonably believes that a public health hazard or public health nuisance exists on the premises or that the premises are being used in a manner or for a purpose listed in the Schedule to these by-laws without a permit, the environmental health officer may serve a compliance notice on one or more of the following persons:

- (a) the owner of the premises;

- (b) the occupier of the premises; or
 - (c) any person apparently in charge of the premises.
- (2) A compliance notice must state –
- (a) why the environmental health officer believes that these by-laws is being contravened;
 - (b) the measures that must be taken –
 - (i) to ensure compliance with these by-laws; or
 - (ii) to eliminate or minimise any public health nuisance;
 - (c) the time period within which the measures must be taken;
 - (d) the possible consequences of failing to comply with the notice; and
 - (e) how to appeal against the notice.
- (3) If a person fails to comply with a compliance notice that requires a particular action be taken, the Council may –
- (a) take the required action specified in the compliance notice; and
 - (b) recover, as a debt, from the person to whom the notice was given, the costs and expenses reasonably incurred in taking the required action.

Prohibition notice

17.(1) An environmental health officer may, after inspecting premises, serve a prohibition notice prohibiting the premises from being used for specified purposes and requiring measures to be taken to ensure that this occurs, on one or more of the following persons:

- (a) the owner of the premises;
- (b) the occupier of the premises; or
- (c) any person apparently in charge of the premises.

if the environmental health officer reasonably believes that that person has not complied with the terms of a compliance notice.

- (2) The environmental health officer 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 environmental health officer reasonably believes that the delay in doing so would significantly compromise public 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 Council 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
 - (d) how to appeal against the notice.
- (4) The environmental health officer must as soon as possible affix a copy of the notice in a conspicuous position on the premises.

Withdrawal of prohibition notice

18.(1) An environmental health officer 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 premises.

- (2) After completing the investigation the environmental health officer must inform the person on whom the prohibition notice was served or that person's agent in writing, whether or not the prohibition has been removed or the prohibition order withdrawn.
- (3) The Council may charge the owner or occupier of any premises where an investigation is carried out in terms of subsection (1), a prescribed fee for undertaking the investigation.

Municipal remedial work

19. The Council may enter any premises and do anything on the premises that it reasonably considers necessary –

- a. to ensure compliance with these by-laws or with any compliance notice or prohibition notice;
- b. to reduce, remove or minimise any public health nuisance; or
- c. to reduce, remove or minimise any significant public health hazard.

CHAPTER 6: APPEALS

20. Appeals

- (1) A person whose rights are affected by a decision taken by any authorised official under these by-laws, may appeal against the decision by giving written notice of the

appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

- (2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).
- (3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (4) When the appeal is against a decision taken by –
 - (a) a staff member other than the municipal manager, the municipal manager is the appeal authority; or
 - (b) the municipal manager, the executive mayor is the appeal authority.
- (5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

CHAPTER 7: GENERAL

Offences

21. Any person who -
- (a) contravenes or fails to comply with any provisions of these by-laws;
 - (b) fails to comply with any notice issued in terms of these by-laws;
 - (c) fails to comply with any lawful instruction given in terms of these by-laws; or
 - (d) obstructs or hinders any authorised official in the execution of his or her duties under these by-laws –

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding R15 000 or imprisonment for a period not exceeding 6 months or both.

Repeal of existing By-laws

22 The Council's existing by-laws are hereby repealed.

Short title and commencement

23 These by-laws shall be called the Environmental By-laws, 200., and shall come into operation on

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SCHEDULE

SCHEDULED USES

The uses of premises defined as scheduled businesses in this Schedule are considered to pose an unacceptable risk to public health unless the measures specified are taken to avoid the risk or to reduce it to a level acceptable to the Council.

1 Definitions

In this Schedule, unless the context indicates otherwise -

“effluent” means any waste water which may arise as a result of undertaking any scheduled use;

“scheduled uses” means any business listed below or that involves an activity listed below –

- (a) panel beating or spray painting;
- (b) operating a waste recycling plant;
- (c) scrap yard;
- (d) tanning, glue or size making;
- (e) charcoal burning, brick burning or lime burning;
- (f) manure or compost making or storing;
- (g) manufacturing malt and yeast;
- (h) cement works, coke-ovens or salt glazing works;
- (i) sintering of sulphurous materials;
- (j) viscose works;
- (k) ore and mineral smelting, calcining, puddling and rolling of iron and other metals, conversion of pig iron into cast iron, reheating, tempering, hardening, forging, conversion and compounding of carbon with iron and other metals;

- (l) works for the production of carbon bisulphide, cellulose lacquer, cyan or its compounds, hot pitch or bitumen, pulverized fuel, pyridine, liquid or gaseous sulphur dioxide or sulphur chlorides;
- (m) works for the production of amyl acetate, aromatic ethers, butyric acid, caramel, enamelled wire, glass, hexamine, lampblack, B-naphtha, resin products, salicylic acid, sulphated organic compounds, sulphurous paints, ultramarine, zinc chloride and zinc oxide; or
- (n) the refining or processing of petrol, oil or their products; and

“scheduled business person” means any person who owns, conducts or carries on a business which is listed as a scheduled use or which includes an activity listed as a scheduled use.

2 Permit requirement

No person may conduct a scheduled business in or on any premises, except in terms of a valid permit.

3 Requirements for premises

No person may undertake a scheduled use of any premises unless –

- (a) the floors of the premises are constructed of cement concrete or a similar impervious material, brought to a smooth finish;
- (b) the floors of the premises are adequately graded and drained for the disposal of effluent to an approved disposal system;
- (c) the inside walls, except where glazed or glass brick or glazed tiles are used, are plastered, brought to a smooth finish and painted with a light-coloured, washable paint;
- (d) the surface of any backyard or open space is paved with concrete or similar impervious material, brought to a smooth finish;
- (e) the premises are provided with adequate light and ventilation as prescribed in National Building Regulations and Building Standards Act, 1977 (Act No.103 of 1977), as amended;
- (f) an adequate supply of running potable water is provided;

- (g) an adequate number of portable containers constructed of iron or another non-absorbent material, equipped with closely fitting lids, are provided for the removal of all waste and waste water from the premises;
- (h) adequate means are provided for the disposal of all effluents arising from the manufacturing process performed on the premises;
- (i) adequate accommodation is provided for the storage of all finished products or articles or materials which are used in the manufacturing process and which may-
 - (i) discharge offensive or injurious effluent or liquids; or
 - (ii) decompose in the course of the work or trade;
- (j) adequate means are provided to control the discharge in the open air of any noxious, injurious or offensive gases, fumes, vapours or dust produced during any handling, preparation, drying, melting, rendering, boiling, grinding process or storage of material;
- (k) adequate toilet facilities are provided as prescribed in the National Building Regulations and Building Standards Act, 1977 (Act No.103 of 1977), as amended;
- (l) a perimeter wall or fence with a minimum height of 2 metres is constructed around the premises;
- (m) all gates to the premises are of solid construction with a minimum height of 2 metres;
- (n) all perimeter walls and gates adequately screen activities from public view; and
- (o) all materials are stacked or stored on the premises below the height of the perimeter screening.

4 Duties of a scheduled business person

A scheduled business person must –

- (a) maintain the premises in a clean, hygienic and good condition at all times;
- (b) maintain all walls and floors of the premises in a manner and condition that prevents the absorption of any waste or waste water;

- (c) maintain all machinery, plant, apparatus, furniture, fittings, tools, implements, vessels, containers, receptacles and vehicles in a clean, hygienic and good condition at all times; and
- (d) prevent the emission of noxious, injurious or offensive gases, fumes, vapours or dust generated during any handling, preparation, drying, melting, rendering, boiling, grinding process or storage of any material on the premises.