

## **MUNICIPALITY OF GREAT KEI**

### **BY- LAW RELATING TO THE PREVENTING OF NUISANES**

The Municipal Manger hereby publishes, in terms of Section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] , read with Section 162 of the Constitution of the Republic of South Africa Act [Act No. 108 of 1996], By-law Relating to the Prevention of Nuisances.

#### **Purpose of By-law**

The purpose of this by-law is to promote a safe, healthy and peaceful environment for the benefit of the public residing within the municipal boundaries, and to provide for practices and procedures to regulate the prevention of nuisances.

#### **CHAPTER 1**

#### **DEFINITIONS**

1. **Definitions** – In this by-law , words used in the masculine gender include the feminine , the singular includes the plural and vice versa , and , unless the context otherwise indicates-

**‘Area’** means the geographical area falling within the municipal boundaries of the Amahlathi Local Municipality;

**‘Authorised official’** means-

- (a) an official of the Municipality who has been authorized by it to administer , implement and enforce the provisions of this by-law;
- (b) a traffic officer appointed in terms of Section 3A of the National Road Traffic Act, 1996 [Act No. 93 of 1996];
- (c) a member of the police service , as defined in terms of Section 1 of the South African Police Service Act , 1995 [Act No. 68 of 1995];or
- (d) a peace officer , contemplated in terms of Section 334 of the Criminal Procedure Act 1977 [Act No. 51 of 1977];

**‘municipality’** means the Municipality of Great Kei, established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 [Act No. 117 of 1998], and includes any political structure, political office bearer, councilor, 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 to such political structure, political office bearer, councilor, agent of employee;

**‘Public place’** means any public street or place, including a beach and any navigable river, to which the public usually has access, but excludes any outdoor facility or municipal building;

**‘public vehicle’** shall include any motor car, cab, taxi, rickshaw , bus or other vehicle hired or let for the conveyance of passengers;

**‘refuse’** without limiting the ordinary meaning of the word , means any unused vehicle or machinery or part thereof , or any scrap metal , builder’s rubble, garden refuse, debris, garbage tyres or any other discarded or abandoned article or object;

**‘Vehicle’** means any conveyance which is capable of transporting one or more persons, except a wheelchair or similar device used for the conveyance of a physically impaired person.

## **CHAPTER 2**

### **PUBLIC PLACE**

#### **2. Breaches of the peace**

A person commits an offence if, in a public place he or she –

- (a) accosts , insults , interferes with, jostles, threatens or harasses another person;
- (b) associates or acts in concert with other persons in a manner which causes or is likely to cause a breach of the peace; or
- (c) Fights or incites or invites another person to fight.

#### **3. Indecent behavior**

(1) A person commits an offence if, in a public place , he or she-

- (a) is not decently clothed so that at least such person’s genitalia are covered from view ; or
- (b) Performs any indecent act, or incites any other person to commit any such offence.

(2) A person commits an offence if, in a public place , he or she-

- (a) Defecates or urinates , except within a public facility provided by or on behalf of the municipality for that purpose;
- (b) Reason of the manner of its introduction or handling , creates a new source of danger to persons or property , or is likely to do so;
- (c) Lights , uses or benefits from, a fire, other than I or on a public facility provided by the municipality for that purpose;
- (d) Attaches any object to , or suspects any object from , a canopy, bridge , verandah or other projection, or a pillar, pole , subject to then provisions of section 9(e); or
- (e) Performs any other act which may cause injury to a person or damage to property, unless he or she is authorized to permitted by law to do so, or does so with the written permission of an authorized official and in accordance with any conditions imposed by him or her.

(3) Regarding the discharge or use of fireworks-

- (a) No person shall discharge fireworks from any private property or public place without the written consent of the municipality;
- (b) Application for the written consent contemplated in terms of subsection (a) shall be
  - (i) Submitted in writing 14 (fourteen) days prior to the event; and
  - (ii) Accompanied by the written consent of the immediate neighbours who occupy abutting properties and properties across the road from the private property or public place from which the fireworks will be discharged ;
- (c) Nothing contained in this section shall be constructed so as to distract from the requirements of the Explosives Act, 2003 [Act No. 15 of 2003], or any regulations promulgated in terms thereof.

## **7. Littering**

- (1) A person commits an offence if, in a public place, he or she –
  - (a) abandons , discards, discharges , or spills or causes or allows to be discharged or spilled , any rubbish or other waste material or thing , whether liquid or solid except in a receptacle provided for the purpose; or

## **9. Obstructions**

A person commits an offence if, in a public place, he or she-

- (a) Leaves anything unattended, having introduced or placed the thing there, so as to cause or be likely to cause an obstruction to persons or vehicles;
- (b) Carries, deposits, handles or introduces anything , so as to be likely obstruct or interfere with the free movement of persons or vehicles or with the use of the public place by persons or vehicles, or to cause injury to any person, or damage to any property;
- (c) Deposits on its surface anything, for the purpose of , or in the course of, loading or unloading a vehicle or of delivering same to premises having access to such public place, for a longer period than is reasonably necessary for that purpose;
- (d) Obscures a road traffic sign, as defined in the National Road Traffic Act , 1996 [Act No. 93 of 1996];
- (e) Hangs or suspends anything from or above a public place , or causes or allows anything to protrude above its surface or to encroach upon it, provided that prior written consent may be obtained from the municipality , which consent may be given subject to conditions and restrictions deemed necessary;
- (f) Gathers with or causes a gathering of other persons in a place or manner so as to, or so as to be likely to, obstruct or restrict or interfere with the movement of persons or vehicles , or the use or enjoyment of a public place by persons or vehicles;
- (g) Performs any other act which has, or is likely to have, a result described in subsection (b).

## **10. Disposal of property found in a public place**

- (1) When anything has been left in a public place, in contravention of section 9, an authorized official may remove it to a store established by the municipality for this purpose , provided that , if such a thing , in the reasonable opinion of the authorized official , has no commercial value , he or she may dispose of same in such a manner as he or she seems fit, and the person who has committed the offence shall be liable to the municipality for the cost of such disposal , as determined by such authorized official.

(2) Items which have been removed to a store in terms of subsection (1) shall be released to any person who, within 7

(a) Obstructs the view of the driver of any vehicle in such public place;

(b) Obstructs or causes a nuisance to persons using such public place ;o r

(c) Obscures a road traffic sign,

An authorized official may serve a notice on the owner or occupier of the private property, requiring him or her to cut down, remove or trim then plant from which the nuisance originates, to an extent, and within the period, stated in the notice, and any person who fails to comply with such notice within the period stated shall be guilty of an offence.

(2) If a person on whom a notice has been served in terms of subsection (1) fails to comply with the terms thereof within the period states therein, then an authorized official may cause the work specified in the notice to be carried out, and such person shall be liable to the municipality for the reasonable cost of the work, as assessed by such authorized official.

## **12. Gatherings**

(1) No person shall convene, or participate in, any gathering at any public place, outdoor facility or municipal building so as to-

(a) Constitute a nuisance, as defined; or

(b) Contravene any provision of the Regulation of Gatherings Act, 1993 [Act No.205 of 1993].

(2) The provisions of subsection (1) shall not be interpreted so as to distract from any persons constitutional right to assemble, demonstrate, picket and present petitions.

## **13. Amplification devices and equipment**

(1) No person shall, without the prior consent of the municipality, use or permit to be used any megaphone, loudspeaker, or other device for the reproduction or amplification of sound, in or upon any public place, for the purpose of making announcements advertising, or doing anything of a similar nature

(2) The municipality may refuse to grant such consent, if it has reasonable grounds for believing that the use of any such megaphone, loudspeaker or other device will cause, or is likely to cause, a nuisance, as defined.

Scheme and to an extent necessarily consistent with the lawful land use thereof;

- (d) Being then owner or occupier of such private property , deposits, stores or causes , or permits to be deposited or stored or to accumulate so as to be visible from a public place, abandoned, derelict or disused furniture , machinery, vehicles or other objects or parts thereof, or scrap metal or other derelict or waste materials;
- (e) Without the consent of the owner or occupier thereof, attaches or places anything to or on any private property ,or in any way defaces such private property, whether by the use of chalk, ink, paint or by any other means whatsoever, unless he is authorized by any law to do so.

(2) An authorised official may order a person who has contravened or is contravening subsection (1)(d) or (e) to remove the item to which the contravention relates from the private property concerned within a specified time, and , if he fails to do so, then the provisions of section 10 shall , mutatis mutandis, apply

## **17. Burglar alarms**

- (1) The owner or occupier of a private property in which a burglar alarm device has been installed shall be guilty of an offence if the burglar alarm device continues to sound either continuously or intermittently for more than 10 (ten) minutes after it has been activate by any cause whatsoever.
- (2) Such a device shall be deemed to be sounding intermittently for the purposes of subsection (1) for so long as it continues to sound at any interval without the intervention of a new cause, provided that it shall be a defense to a charge of contravening subsection (1) if it can be proved that an automatic cut-off mechanism fitted to such device has failed to operate, for reasons beyond the control of the occupier, and without negligence on his or her part.
- (3) When a burglar alarm device has been installed in any private property , the owner or occupier of the private property shall, unless a mechanism referred to in subsection (2) has been fitted , either erect, and maintain , at the main entrance to the private property , a notice specifying the names and telephone numbers of persons who have access to the private property at all times for the purpose of deactivating the device, or shall arrange for automatic response to an alarm to operate at all times
  - (i) The use of such appliance does not cause interference to television or radio reception in the neighborhood, that every precaution possible is taken to minimize

noise therefrom and the duration of use thereof , and that such activity is not for or , related to any business conducted from the private property or elsewhere ;and

(ii) Such building or contract work and the use of electrical appliances for such hobby or activity is confined to the hours of 07h00 to 19h00.

(3) Whenever an authorized official is of the reasonable opinion that a person engaged in a hobby or activity is contravening subsections (1) or (2),he or she may instruct the owner or occupier of the private property , or any person responsible for or steps as the authorized official specifies, to abate the nuisance, or to avoid the creation of a nuisance, or ,if this can only be achieved by the cessation of the use,activity,event or function ,to bring it to an end forthwith, or within a time prescribed by the authorized official.

(4) If the owner, occupier or person responsible for, or participating in, the use, activity event or function mentioned in subsection (3) fails to abide by any notice or instruction given by an authorized official, then such official may issue a notification in terms of Section 341 of the criminal Procedure Act, 1977 [Act No.51 of 1977] upon the owner, occupier or person responsible.

## **20. Lighting of fires**

(a) No person shall, on any private property, light fire, or burn, or attempt to burn, any rubbish or refuse, or any grass or other vegetation, without taking adequate precautions to prevent the uncontrolled spread of the fire, or the creation of a nuisance, whether as a result of the production of ash, flames, fumes, heat, smoke, or otherwise.

(b) Should any person persist with the burning of any matter without taking effective precautionary measures as described in subsection (a), where such burning is the subject of a reasonable complaint lodged with the municipality, through its authorized official, shall be entitled to enter upon the private property on which the burning is taking place, in order to extinguish the fire, and to charge with an offence the person concerned.

Said notice, and may recover the cost thereof from the said person, in accordance with the municipality's tariff of charges.

## **23. Control or mosquitoes, flies, rodents and other vermin**

(1) It shall be the duty of every owner and occupier to prevent mosquitos, flies, rodents or other vermin from developing or being harbored on any private property

owned or occupied by such owner or occupier , and any such owner or occupier who fails to comply with the provisions hereof shall be deemed to have contravened this by-law.

(2)The owner or occupier of private property shall , on being served with a notice signed by an authorized official, carry out such measures as may be specified ,therein, for the removal of conditions favorable for the development of, or harboring of mosquitoes ,flies, rodents or other vermin ,within the time specified in the notice..

(3) If the owner or occupier refuses to carry out the measures specified in a notice issued in terms of this by-law, or fails to do so within the time specified, then an authorized official may arrange for such measures to be carried out, and the reasonable costs incurred in so doing shall be recoverable by the municipality from the person upon whom the notice is served, at a charge specified in the municipality's tariff of charges.

#### **24. Keeping or management of a brothel**

(1) No person shall keep or manage, or act or assist in the keeping or management of, a brothel upon any private property.

(2) No person, being the owner, lessee or occupier of any private property such private property, shall knowingly permit such private property or any portion thereof or any room therein to be used as a brothel or for the purpose of prostitution, or to be a party to continue thereof for such purposes.

(3) No person, being the owner of any private property, or the agent of such owner, shall let such private property or any portion thereof or any portion thereof or any room therein is to be used as a brothel or for the purposes of prostitution.

(4) Nothing contained in this section shall be continued so as to distract from the requirements of the Sexual Offences Act, 1957 [Act No.23 of 1957]

(k) makes any excavation in, or disturbs the surfaces of, such property;

(l) Climbs or sits upon, hangs onto, or mounts, any such property;

(m) introduces any object or material, or erects any structure, on such property;

(n) enters such property, or remains there;

(o) Allows causes or permits any other person to commit any of the aforesaid acts, unless he or she does so in the performance of a lawfull right or duty, or with the prior consent of an authorised official, or in accordance with the provisions of any law.

(2) Notwithstanding the a foregoing, nothing shall prevent the owner or occupier of private property from planting and maintaining grass and plants on that portion of the verge of a street which abuts on such municipal property or property under the control of the municipality, provided that the lawful passage of vehicular and pedestrian traffic and the lawful parking of vehicles is not thereby obstructed and the grass and plants are properly maintained and do not cause a nuisance.

(3) Any person who is convicted of an offence in terms of subsection (1) shall pay to the municipality the cost of remedying any loss or damage suffered by the municipality as a result of the commission of that offence, and the cost of the removal and disposal of any material, object or structure involved in the commission of the offence, and, for this purpose, the provisions of section 10 shall apply.

## **CHAPTER 5**

### **PRESUMPTIONS, OFFENCES AND PENALTIES**

#### **26. Presumptions**

When an employee, in the course of his or her employment, performs any act, or is guilty of an omission, which constitutes an offence in terms of this by-law, the employer shall also be deemed to have performed the act, or to be guilty of the omission, and he or she shall be liable on conviction for the penalties mentioned in terms or section 27, unless it can be proved that

Or manufacturing, as contemplated in terms of section 8(b);

(c) The granting of written consent and accompanying conditions and restrictions for the hanging or suspension of anything from or above a public place or so as to cause an obstruction, contemplated in terms of section 9(e);

(d) The disposal of property found in a public place ,including –

(i)The municipality's identification and designation of a store for property removed in terms of section 10 (1);

(ii) Guidelines for the determination of the commercial value of property so removed;

(iii) A tariff of charges for the removal and storage of items, as contemplated in terms of section 10(2)

(iv) Procedures to be followed with regard to the sale or disposal of items in terms of sections 10(3) and (6)

- (e) The contents and service of a notice on the owner or occupier of private property, the carrying out of work necessary to give effect to the notice, and guidelines for the determination of the reasonable costs thereof, as contemplated in terms of sections 11(1) and (2);
- (f) The granting of consent for the use of amplification devices and equipment, as contemplated in terms of section 13;
- (g) The prevention of nuisances on private property, including-
  - (i) Procedures for the removal of any item from private property, as contemplated in terms of section 16(2);
  - (ii) The giving of instructions and notification to an occupier of private property, for the abatement or cessation of a nuisance, as contemplated in terms of sections 19(3) and (4);
  - (iii) Procedures for entering of entering of private property, for the extinction of fires thereon, as contemplated in terms of section 20(b);

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

Any by-laws relating to the prevention of nuisances adopted by the municipality or any erstwhile municipal council now comprising an administrative unit of the municipality shall be repealed from the date of promulgation of this by-law.

## **30. Short title**

This by-law is called the By-law Relating to the Prevention of Nuisances, 2004, and takes effect on a date determined by the municipality by proclamation in the Provincial Gazette.