

PROVINCIAL NOTICE

[NO. 178 OF 2011]

**NOTICE IN TERMS OF SECTION 14 OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000: PUBLICATION:
STANDARD CONTROL OF PUBLIC NUISANCES BY-LAW**

I, M.G Qabathe, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association: Free State, do hereby in terms of section 14(2)(a)(i) of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), make standard by-laws as set out in the Schedule.

SCHEDULE

CONTROL OF PUBLIC NUISANCES BY-LAW

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Definitions

1. In this By-law, unless the context otherwise indicates:
 - "building"** means any enclosed area of a structure owned or leased or administered by the Municipality;
 - "graffiti"** means any drawing, figure inscription, symbol, or other marking which is scratched, painted, drawn in pen or marker or placed by some other permanent or semi-permanent means upon streets, public or private view without the express permission or consent of the property owner;
 - "health Officer"** means an individual who carries on , and is registered in terms of legislation to carry on , an occupation which involves the provision of health care, health advice or treatment for the physical or mental health or for the well-being of individuals.
 - "local community"** means community as defined in section 1 of the Local Government: Municipal Systems Act 32 Of 2002;
 - "Municipal area"** means Municipal area determined in terms of the Local Government: Municipal Demarcation Act 27 of 1998;
 - "Municipal Manager"** means the Municipal Manager appointed as such in terms of Section 82 of the Municipal Structures Act 117 of 1998 as amended; **"notice"** means notice in writing, and "notifying" and "notified" shall have corresponding meanings;
 - "public nuisance"** means a thing, act, occupation, condition or use of property which shall continue for such length of time as to:
 - (a) annoy, injure or endanger the comfort, health, repose or safety of the public
 - (b) in any way render the public insecure in life or in the use of the property;
 - (c) greatly offend the public moral decency;
 - (d). unlawfully and substantially interfere with; obstruct or render dangerous for passage any street, ally, road, navigable body of water or other public way;
 - "smoking"** means using, carrying or possessing a lighted cigarette, cigar, pipe or other lighted smoking equipment;
 - "vehicle"** means any self-propelled, enclosed car owned or leased by the Municipality, including those vehicles contracted for passenger transportation services;

Interpretation

2. When interpreting a provision of this By-law, the interpreter must prefer any reasonable interpretation of the provisions that is consistent with the spirit and object of this By- law over any alternative interpretation that is inconsistent thereto.

Purpose of this by-law

3. This By-law aims to create a safe, healthy and peaceful living environment in which people exercise their Constitutional rights responsibly, respect the rights of others and uphold high moral values, thus fulfilling the primary objects of this By-law, viz:

- a) To give effect to the Municipality's constitutional mandate to promote a safe and a healthy environment as contained in section 152 (d) of the Constitution of the Republic of South Africa, 1996
 - (i) by regulating public nuisances likely to affect peace and safety, and
 - (ii) by prohibiting all public nuisances having negative impact on health,
- b) To give effect to the Municipality's duty to protect and uphold Communities good moral values by outlawing all immoral and indecent practices, and

Application of the By-Law

4. This By-law applies to:
- (a) The local community as contemplated in Section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and
 - (b) Legal personae existent or incorporated within the Municipal area.

Public nuisance affecting health

5. The following acts, omissions, places, conditions and things are hereby specifically declared to and prohibited as public health nuisances, but may not to be construed to exclude any other health nuisance within the definition of any applicable law
- (1) All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;
 - (2) Carcasses of animals, birds or fowls not buried or otherwise disposed of in a sanitary manner within twenty-four hours after death;
 - (3) Accumulation of decayed animals or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed;
 - (4) Stagnant water in which mosquitoes, flies or other insects can multiply;
 - (5) Uncovered refuse bins;
 - (6) Noxious weeds and other rank growth or vegetation,
 - (7) The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within one kilometre therefore in such quantities as to endanger the health of persons or ordinary sensibilities or to threaten or cause substantial injury to property;
 - (8) The pollution of any public well or cistern, stream lake, canal or body of water by sewerage, industrial wastes or other substances;
 - (9) Any use of property, substances or things within the Municipal area, emitting or causing any foul, offensive, nauseous, noxious, or disagreeable odours, or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the Municipality;
 - (10) All abandoned wells not securely covered or secured from public use; and
 - (11) All animals running at large.

Public nuisance offending moral decency

6. The following acts, places, conditions and things are hereby specially declared to be prohibited as public nuisances offending public morals and decency, but such enumeration is not be construed to exclude other nuisance offending public morals and decency within the definition of any other applicable law:
- (1) all disorderly houses, houses of ill fame, gambling houses and buildings or structures kept for or resorted to for the purposes of prostitution, sexual intercourse or gambling in contravention of any law;
 - (2) all gambling devices and slot machines not operated in accordance with the law;
 - (3) all places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, or manufactured, without a permit or license as provided for in law;
 - (4) any place or premises within the area of the Municipality where laws relating to the public health, safety, peace, morals or welfare, are openly, continuously, repeatedly and intentionally violated;
 - (5) any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the republic;
 - (6) consumption of any intoxicating liquor or fermented malt beverages while in or upon any public street, alley, sidewalk or public place;
 - (7) defecating or urinating outside of designated sanitary facilities, upon sidewalk, street, alley, public parking lot, park, playground, cemetery, or other public area or upon a private property in open view of the public or in the halls, rooms, stairway, or elevators of public or commercial building or indecent exposing his or her person; and
 - (8) smoking in any of the Municipality's vehicles, buildings or areas designated as non-smoking zone,

Public nuisance affecting peace and safety

7. The following acts, place, conditions and things are hereby declared to be and outlawed as public nuisances affecting peace and safety, but this enumeration may not be construed to exclude other nuisances affecting public peace or safety within the definition of any other applicable laws:
- (1) signs and billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated as to endanger the public safety;
 - (2) all buildings erected, repaired or altered in violation of the provision of the building regulations relating to materials and manner of construction of buildings and structures within the Municipality;
 - (3) all unauthorised signs, signals, markings or devices whose purpose is or may be mistaken as official traffic control devices placed or maintained upon or in view of any Municipal road;
 - (4) all trees, billboards or obstructions which prevent persons driving vehicles on public streets and Municipal roads from obtaining a clear view of traffic when approaching an intersection or pedestrian crossing;
 - (5) all use or display of fireworks except as approved by Council resolution;
 - (6) unnecessary discharging of firearms, shooting or discharging a bow, crossbow or similar devices which propels or projects an arrow or similar projectile within the area of the municipality;
 - (7) all building structures so old, dilapidated or out of repairs as to be dangerous, unsafe, unsanitary or otherwise unfit for human use;
 - (8) all loud, discordant and unnecessary noises or vibration of any kind;
 - (9) the keeping or harbouring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or making of other noises greatly annoys or disturbs a neighbourhood or any considerable number of persons within the area of the Municipality;
 - (10) all obstructions of streets, sidewalks or municipal roads and all excavations in or under the same, except as permitted by the by-laws of the Municipality or which, although made in accordance with such bylaws, are kept or maintained for an unreasonable length of time after the purpose therefore has been accomplished,
 - (11) all open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalks,
 - (12) all abandoned refrigerators from which the doors and other covers have not been removed or which are not equipped with a device for opening from inside;
 - (13) any unauthorised or unlawful use of property abutting on a public street, alley or sidewalks or of a public street, alley or sidewalks which cause large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks;
 - (14) repeated or continuous violations of the by-laws of the Council or laws of the Republic relating to the storage of flammable liquids;
 - (15) discarding or leaving outside of any building or dwelling in a place accessible to children any box or container of any kind which has an airtight door or lock which may not be realized for opening from inside, without first removing the door lock.

Public nuisance affecting property and property usage

8. Property owners, occupants or person authorized to use same:
- (1) shall maintain in good repair, painted or covered with exterior siding material intended for that use by the manufacturer for purposes of preservation and appearance, the exterior of every structure or accessory structure, residential and non-residential, including fences;
 - (2) shall maintain, free of broken or missing siding, shingles or exterior woodwork, crumbling stone or bricks, excessive chipped, peeling, or lack of paint, missing, broken or deteriorating steps, porches, handrails and guardrails or any other condition reflective of deterioration and or inadequate maintenance or as may tend to depreciate property values in the area or create a nuisance or hazard;
 - (3) may not allow on any property any debris or condition, including, but not limited to woods, bricks, concrete, rubble, or other building material, crap metal, tree limbs or bush, tree stumps with a height greater than their diameter, diseased or dead trees or other yard waste, household refuse not properly contained or stored, inoperable machinery or parts thereof (except when housed inside out of public view), refrigerators, stoves, washing machines, dryers, or other appliance, water heaters, bedsprings or other furniture not intended for exterior use by the manufacturer and used or stored on open porches or yards, rutted lawns on driveways or any other unsightly conditions as may tend to depreciate property values in the area or create a nuisance,

- hazard or eyesore;
- (4) may not store outdoors or allow the outside storage of firewood on any property used or zoned for residential use, except as permitted in this paragraph. Firewood may not be stored in the front yard of such property or within the setback, except that firewood maybe temporarily stored for a period not exceeding fourteen days of delivery to the property. All firewood may be stacked no higher than the upper-most horizontal portion of the fence and infestation of mice, rats, other rodents or insects may not be permitted under or near the stack;
 - (5) may not allow any brush, debris or refuse from the processing of firewood to remain anywhere on the property;
 - (6) shall be responsible for the extermination of any insects, rodents, pigeons or pests when the infection is caused by their failure to maintain the building in the pests -proof condition.

Defacement or damage of property by graffiti

9. Graffiti is hereby declared to be a public nuisance devaluing property and:
 - (1) any person who affix graffiti to any property is liable for the cost of removing or covering such graffiti in addition to any fine imposed for violating this section;
 - (2) parents of any minor child who affixed graffiti may be held liable for the cost of removing or covering the said graffiti;
 - (3) upon the discovery of the graffiti the owner or lawful occupant of the property must:
 - (a) notify the Council before removing or covering such graffiti.
 - (b) cover or remove the graffiti within fifteen days in compliance with written notice served upon them by the Council to remove or cover such graffiti.
 - (4) In the event of the owner or lawful occupant of the property failing to comply with the Council notice to cover or remove the graffiti, the Council shall have the graffiti covered or removed and all costs, fees and expenses will be assessed to the said owner or lawful occupant.

Damage to public property

10. The following acts constitute damage to public property and are declared public nuisance:
 - (1) breaking, soiling, defacing, injuring or damaging any guidepost, signs, street lamp or post, traffic signs or signal, fountain, statue, monument or other ornamental structure within any public street, alley, park, cemetery or other public place;
 - (2) breaking, soiling, defacing, injuring or damaging any part of any public building or any public property or equipment,
 - (3) opening, removing, operating or otherwise tampering with any Municipal property or equipment, including but not limited by way of emuneration, to manholes and covers, pumps, storm grates, sewers and mains, water valves and stop shut-off boxes, meters, vehicles, and attachment thereto, barricades and signal lighting for construction and emergency purposes;
 - (4) painting or posting any bill, notice, picture, advertisement upon any public building, curb stone, crosswalk, gutter, street, sidewalk, hydrant, lamp post and bridge;
 - (5) tampering with, injuring, breaking, cutting, taking down or disarranging any electric light pole, fire or alarm box, or any wire cord,, lamp or other apparatus used in operating or maintaining any electric light or firearm, without authority to do so or, post any bills or posters of any kind whatsoever upon any such poles or posts within the area of the Council;
 - (6) This section (Section 10) does not apply to duly authorized employees or agents of the Municipality or to a person authorized by the permit issued by the Council, or to any person possessing written authorisation from the Municipal Manager.)

Advertisement on private property without consent

11. A person may not post paper or any written or painted bill, notice or advertisement on any part of the outer walls of any building without first having obtained the consent of the owner thereof.

Procedure on receipt of complaint

12. Whenever complaint is made to the Municipal Manager that a public nuisance exists within the Municipal area, the Municipal Manager must notify the police, health Officer or building Inspector who must forthwith inspect the premises and make a written report of his or her findings to the Municipal Manager. Whenever practicable, the Inspecting Officer shall cause photographs to be taken of the premises and must file the same.

Summary abatement

13. (1) If the inspecting officer shall determine that a public nuisance exists on private property and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Municipal Manager may direct that a notice be served on the owner or, if the owner cannot be found on the occupant or person causing, permitting or maintaining such nuisance and to post a copy of said notice on the premises. Such notice must direct the owner, occupant or person causing, permitting or maintaining such nuisance to abate or remove such nuisance within twenty-four hours and must state that unless such nuisance is so abated, the Municipality will cause the same to be abated and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the same, as the case may be.
- (2) If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the health Officer, in case of health nuisance, and the police, in other cases, shall cause the abatement or removal of such public nuisance.

Repeal

14. Any by-laws relating to the Control of Public Nuisance adopted by the municipality or any municipality now comprising an administrative unit of the municipality is repealed from the date of promulgation of these by-laws.

Short title and commencement

15. These by-laws are called the by-laws relating to Control of Public Nuisance, 2011.