

EMAKHAZENI LOCAL MUNICIPALITY



NUISANCES AND OFFENSIVE CONDITIONS BY-LAWS

In terms of and under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 (Act108 of 1996), the Highlands Municipality enacts as follows:-

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1. Definitions

In these By-laws, except as otherwise expressly provided or unless the context otherwise requires:

"camp" when used as a verb includes the use of a vehicle for the purpose of habitation or sleeping, whether or not such vehicle is designed or adapted for any such purpose;

"canopy" means a rigid roof-like projection from the wall of a building;

"Council" means the Highlands Municipal Council and includes, in relation to a duty, function or power under these By-laws, a committee or official of the Council to whom it has assigned or delegates such duty, function or power;

"dependence- producing substance" means a dependence- producing substance as defined in the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992);

"discharge" includes, in relation to the use of a gun, the act of discharging a blank cartridge;

"gun" includes a weapon of any description from which any bullet, pellet, shot or any missile of any description can be discharged, whether or not activated by explosive;

"nuisance" means any act, omission or condition which-

- (a) is offensive;
- (b) is injurious or dangerous to health;
- (c) materially interferes with the ordinary comfort, convenience, peace or quiet of the public; or
- (d) adversely affects the safety of the public;

"official" means an officer of the Council to whom it has assigned or delegated a duty, function or power under these By- laws, in relation to the exercise or performance of that duty, function or power and includes any employee acting under the control and direction of such officer;

"police officer" means a member of any police force established under any law;

"prescribed" means prescribed by the Council;

"public place" means any square, park, recreation ground, sports or sanitary lane which has –

- (a) in connection with any subdivision or layout of land into erven, lots or plots, been provided, reserved or set apart for use by the public or the owners or occupiers of such erven, lots or plots, whether or not it is shown on a general plan, of subdivision or diagram;

- (b) at any time been dedicated to the public;
- (c) been used without interruption by the public for a period of at least thirty years;
- (d) at any time been declared or rendered such by the Council, and includes a street;

“road traffic sign” bears the meaning given to it by the Road Traffic Act, 1989 (Act 29 of 1989);

“sidewalk” means the portion of a verge intended for the exclusive use of pedestrians;

“street” means any street, road, highway, thoroughfare, lanes, footpath, sidewalk, alley, passage, bridge or any place of a like nature or any portion of the width or length thereof and includes all appurtenances of whatsoever nature thereto;

“vehicle” bears the meaning given to it by the Road Traffic Act, 1989 (Act 29 of 1989)

“verge” means that portion of a street which is not constructed or intended for vehicular traffic;

“workplace” has the meaning given to it by the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and the regulations there under.

2. **Principles and objectives**

The Highlands Municipal Council, aware of its duty the Constitution to control public nuisances, and to prevent the occurrence of any nuisance or offensive condition, or where a nuisance has so occurred, to abate, or cause to be abated such nuisance, or remedy, or cause to be remedied, such condition, as the case may be, therefore in addition to national and provincial legislation and other by-laws (of the Highlands Municipal Council) in which specific nuisances conditions are controlled, adopts these By-laws with the aim to –

- (a) control public nuisances and offensive conditions; and
- (b) where public nuisances and offensive conditions has occurred, to be abated or cause to be abated such nuisances, or remedy or cause to be remedied such offensive conditions.

3. Application

These By-laws apply to all persons in, including travellers passing through, areas under the jurisdiction of the Highlands Municipal Council.

CHAPTER 1

NUISANCES AND OFFENSIVE CONDITIONS

4. Noise and light

- (1) No person may, unless he or she acts lawfully in the exercise of a right or in the performance of a duty and to the extent that is expressly authorized by- law, in a public place or on premises by act or omission cause or create or allow to arise or exist if is under his or her control –
 - (a) that noise or vibration which arises from or is caused by the operation or use of equipment or machinery is produced;
 - (b) that noise or vibrations by or arising from or caused by the operation or use of any device which produces, reproduces or amplifies sound is reproduce;
 - (c) that noise produced by the striking of any object;
 - (d) that noise is produced by the discharge of any gun, firework or other explosive device;
 - (e) that any loud or disturbing noise is made, such as quarreling, shouting, screaming, or swearing; or
 - (f) that an excessively bright or a flashing or intermittent light is produced

5. Dust, fumes, gases, smells, and smoke

- (1) No person may, unless he or she acts lawfully in the exercise of a right or in the performance of a duty and to the extent that is expressly authorized by law, in a public place or on premises by act or omission cause or create or allow to arise or on premises by act or omission cause harmful, noisome or is caused by –
 - (a) any act or activity
 - (b) the operation or use of equipment or machinery; or
 - (c) the condition of any property , movable or immovable

(2) A person who contravenes subsection (1) commits an offence.

6. Motor vehicle's alarm

- (1) The registered owner of a vehicle to which a theft prevention alarm device has been fitted may not allow the device to continue sounding either continuously or intermittently for more than ten minutes after it has been activated by any cause whatsoever, whether the motor vehicle is in a street or on public place or on premises, and the device is deemed to be sounding intermittently for the purpose of this subsection so long as it continues to sound at any interval without the intervention of a new cause.
- (2) If a motor vehicle alarm has sounded for longer than ten minutes the vehicle is, if it is in a street or public place, deemed to have been abandoned by the owner and may be removed by an official or police officer and the provisions of subsections 114(2) to (7) of the Road Traffic Act, 1989 (Act 29 of 1989) apply with the necessary changes
- (3) An owner who contravenes subsection (1) commits an offence; however it is a defence to a charge of contravening this subsection if he or she proves that an automatic cut-off mechanism which is fitted to the device had failed to operate for reasons beyond his or her control and without negligence on his or her part.

7. Burglar alarm

- (1) The occupier of premises in which a burglar alarm device has been installed may not allow the burglar alarm to continuously or intermittently for more than ten minutes after it has been activated by any cause whatsoever, and the device is deemed to be sounding intermittently for purposes of this subsection so long as it continues to sound at any interval without the intervention of a new cause.
- (2) If a burglar alarm device has been installed in any premises the occupier of the premises, unless an automatic cut –off mechanism has been fitted, must -
- (a) either erect and maintain at the main entrance to the premises a notice which specifies the names and telephone numbers of persons who have access to the premises at all times for the purpose of deactivating the device; or

- (b) arrange for an automatic response to an alarm to operate at all times

(3) An occupier who contravenes subsection (1) or who does fails to comply with subsection (2) commits an offence, however it is a defence to charge of contravening subsection (1) if he or she proves that an automatic cut-off mechanism which is fitted to such device has failed to operate for reasons beyond his or her control and without negligence on his or her part.

8. Air- conditioning appliance

(1) The owner or occupier of a building, who has installed therein or who maintains and operates therein an air-conditioning appliance must ensure that the appliance is so installed, maintained and operated –

- (a) that the generation of noise, smell or vibration which constitutes a nuisance to the public, any other occupier of the building or any occupier of premises in the neighbourhood is prevented; and
- (b) that the discharge or generation of condensate onto a public place or as to be a source of danger or nuisance to the public is prevented.

(2) A person who contravenes subsection (1) commits an offence.

9. Use of premises

(1) No occupier of premises may –

- (a) use the premises for a purpose;
- (b) cause, allow or permit the use of the premises for a purpose; or
- (c) organize or allow or permit an activity, event or function in or on the premises,

(2) If subsection (1) is contravened, an official or police officer of the rank of sergeant or higher may instruct the occupier of the premises and any person responsible for or participating in the use, activity, event or function to take such steps as he or she 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 and end immediately or to cause it to be brought to end within a time prescribed by him or her.

(3) A person who contravenes subsection (1) or who fails to comply with an instruction issued in term of subsection (2) commits an offence.

10. Lighting of fire

(1) No person may on any premises light a fire or burn or attempt to burn, or cause or allow any of these actions to be done, any rubbish or refuse or any grass or other vegetation without taking adequate precautions to prevent the uncontrolled spread of fire or the creation of a nuisance, whether as a result of the production of ash, flames, fumes, heat, smoke or otherwise.

(2) A person who contravenes subsection (1) commits an offence.

11. Obstruction caused by plant and overhanging vegetation

(1) An owner or occupier must ensure that a tree, shrub or other plant (or any portion of such plant) growing on any part of his or her premises which abut a street or public place does not –

- (a) obstruct the view of the driver of any vehicle in the street or in a public place;
- (b) obstruct or cause a nuisance to persons using the street or public place;
- (c) obscure a road traffic sign; or
- (d) cause or is likely to cause nuisance or a source of danger to a person using a street or public place.

(2) An owner or occupier of premises may plant and maintain grass and plants on that portion of the verge of a street which abuts his or her premises a long as-

- (a) the lawful passage of vehicular and pedestrian traffic and the lawful parking of vehicles is not thereby obstructed; and
- (b) the grass and plants are properly maintained and do not give rise to a nuisance,

And a person who contravenes paragraph (a) or (b) commits an offence.

(3) Should a person contravene subsection (1) an official may serve a notice of compliance on the owner of the premises or, if the premises are occupied by a person other than the owner, on the occupier thereof, requiring him or her to cut down, remove or trim the plant from which the nuisance or source of danger originates to an extent and within the period stated in the notice.

(4) The provisions of subsections (5) to (7) replace the common law regarding the rights of a neighbour to trim vegetation growing on premises other than his or her premises and which overhangs onto his or her premises.¹

(5) Where an owner or occupier of land wishes to trim a plant, tree or vegetation growing on premises other than his or her own, which plant, tree or vegetation overhangs a fence between his or her premises and the other premises, he or she must, in writing, notify the owner or occupier of the other premises of his intention to do so, and must in the notice request such owner or occupier to trim such plant, tree or vegetation within a reasonable time, which time may not be less than 30 days, and up to a height not exceeding 10 metres from ground level, and –

- (a) where such owner or occupiers trims such plant, tree or vegetation, it will be at his or her own cost;
- (b) where such owner or occupiers trims such plant, tree or vegetation within the time stipulated in the notice, the owner or occupier of land who served the notification, may –
 - (i) himself or herself trim the plant, tree or vegetation;
 - (ii) recover the costs from the owner or occupier who failed to do so; and
 - (iii) deposit the cuttings onto the premises on which the plant, tree or vegetation is growing.

(6) Where an owner or occupier of land trim a plant, tree or vegetation growing on premises other than his or her own, which plant, tree or vegetation overhangs a fence between his or her premises, without serving a notice as contemplated in subsection (5), or without the permission of the owner or occupier of the property on which the plant, tree or vegetation is growing, such owner or occupier commits an offence.

(7) The provisions of subsections (1) to (3), with the necessary changes, apply to intruding roots.

12. Breach of peace

(1) No person in a public place may –

- (a) accost, insult, interfere with, jostle, threaten or harass another person;
- (b) associate or act in concert with other persons in a manner which causes or is likely to cause a breach of the peace;
- (c) fight or incite or invite another person to fight;
- (d) behave in a disorderly, indecent or unseemly manner,
- (e) throw anything at any person or object; or
- (f) behave in a violent or offensive manner, or cause a nuisance.

(2) A person who contravenes subsection (1) commits an offence.

16. Loitering

(1) No person may loiter in a public place.

(2) No person may jostle or loiter at or within 20m of the entrance of any place of public worship during the –

- (i) time of divine service;
- (ii) assembly at the place of worship; or
- (iii) departure from such place of the congregation, so as to obstruct or annoy any persons going to, attending at, or leaving the place of worship.

- (3) If an official suspects a person of loitering, the official may instruct the person to leave.
- (4) A person who contravenes subsections (1) or subsections (2) or who refuses to comply with an instruction by an official to leave commits an offence.

17. Games

- (1) No person may in a public place play any game or indulge in any pastime.
- (2) A person who contravenes subsection (1) commits an offence

18. Drying of clothes or object

- (1) No person may in a public place expose, hang up or lay out to dry any article of clothing or other object.
- (2) No person who contravenes subsection (1) commits an offence.

19. Dangerous act

(1) No person, unless he or she is authorized or permitted by law to do so or does so with the written permission of an authorized officer and in accordance with any conditions imposed by the official, may -

- (a) in a public place activate, handle or use any material, object or thing –
 - (i) which is likely to cause injury to a person; or
 - (ii) which is likely to intimidate a person;
 - (iii) which is likely to damage property; or
 - (iv) in a manner which is likely to result in injury, intimidation or damage
- (b) 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 new source of danger to person or property or is likely to do so;
- (c) light, use or benefit from a fire other than in or on a facility provided by the Council for that purpose;

- (d) attach any object to or suspend any object from canopy, verandah or other projection or a pillar, pole or post, except if allowed to do so by the Outdoor Signs (Advertising and other) By- laws, 2005; or
- (e) perform any other act which may cause injury to persons or damage to property.

(2) A person who contravenes subsection (1) commits an offence.

20. Intoxication

- (1) No person may be in a public place if he or she is in a state of intoxication or under the influence of a dependence- producing substance.
- (2) No person may, if he or she is in a state of intoxication or under the influence of a dependence-producing substance, remain a in public if he or she is instructed by an official to leave the place.
- (3) No person may in a public place administer a dependence-producing drug to himself or another person.
- (4) A person who contravenes subsections (1) or subsection (3) or who refuses to comply with an official to leave a public place commits an offence.

21. Defecating, urinating , spitting or using of toilet

- (1) No person may –
 - (a) Defecate or urinate in a public place except in a facility which is provided by or on behalf of the Council for the purpose;
 - (b) enter or use a public toilet which reserved or set aside for members of the opposite sex; or
 - (c) spit in a public place.
- (2) A person who contravenes subsection (1) commits an offence.

22. Obstruction

- (1) No person may, in a public place –
 - (a) leave anything unattended, if he or she has introduced or placed it there, so as to cause or be likely to cause an obstruction to a persons or vehicles;

- (b) carry, deposit, handle or introduced anything so as to be likely –
 - (i) to obstruct or interfere with the free movement of persons or vehicles; or
 - (ii) to obstruct or interfere with the use of a street or public place by the persons or vehicles;
 - (iii) to cause injury to person or damage to any property, and perform any other act which has or is likely to have a result contemplated in paragraphs (i), (ii) or (iii);
 - (c) deposit on the surface of the public place anything for the purpose of or in the course of –
 - (i) loading or unloading a vehicle; or
 - (ii) delivering an such thing to premises having access to the street or public place,
For a longer period than is reasonably necessary for that purpose;
 - (d) in whatever manner obscure a road traffic sign;
 - (e) hang or suspend anything above the surface of the public place or causes or allows anything to protrude above such surface or to encroach upon it, except if allowed to do so by the Outdoor Signs (Advertising and other) By- laws, 2005;
 - (f) gather with or cause a gathering of other persons in a place or manner as to or as to be likely to obstruct or restrict or interfere with the movement of persons or vehicles or the use or enjoyment of the street or public place by persons or vehicles.
- (2) A person who contravenes any of the provisions of subsection (1) commits an offence, and should a person contravene subsection (1) (a), an official may furthermore serve on the person a notice of compliance as contemplated in section 31.

23. Littering

- (1) No person may, in a public place –

- (a) abandon, discard, discharge or spill or cause or allow to be discharged or spilt any rubbish or other waste material or thing, whether liquid or solid, except in a receptacle for the purpose;
 - (b) remove from a receptacle provided for the disposal of refuse any of its contents and cause the same to be discharged from such a receptacle.
- (2) Any material or thing that person drops or allows to fall without being immediately retrieved by him is for the purposes of subsection (1) (a) deemed to have been discarded by him or her.
 - (3) Any material or thing found in a street or public place in circumstances giving rise to a suspicion that an offence has been committed under subsection (1) (a) and which bears the name of a person or in respect of which there is reasonable suspicion that it is or was the property or under the control of that person is for the purposes of subsection (1) (a) deemed to have been abandoned or discarded by that person until the contrary is proved.
 - (4) A person who sweeps or in any other way introduced any rubbish or waste material or thing into a street or public place is deemed to have discarded it there for the purposes of subsection (1) (a).
 - (5) A person who has been observed by an official or police officer to contravene the provisions of the paragraph (1) (a) or (b) may be directed by the official or police officer to remove the rubbish, material or thing or to place it in a receptacle provided by or on behalf of the Council.
 - (6) A person who performs or incites another person to perform any of the acts described in subsection (1) commits an offence, or who fails to comply with a direction by an official or police officer, commits an offence.

24. Offences relating to Council's property

- (1) A person, unless he or she does so in the performance of a lawful right or duty or with the prior consent of the Council or accordance with the provisions of any law, commits an offence if, in relation to any property in the ownership or possession of or under the control of the Council, whether movable or immovable, and including any street or public place, he or she –
 - (a) willfully or negligently damages or destroys such property or any part thereof;

- (b) removes any earth, sand, shale, stone, turf or any other material or part thereof;
 - (c) breaks, cuts, destroys or removes any bush, shrub, tree or other plant or removes any branch, flower, leaf or other part thereof
 - (d) attaches to or places on or next to such property any thing, including any advertisement, bill, pamphlet, placard or poster or other illustrative, written or printed matter;
 - (e) hangs or suspends anything on or from it;
 - (f) defaces any such property whether by the use of chalk , ink or paint or by means whatsoever;
 - (g) extinguished any lamp or light;
 - (h) displaces or removes any barricade, enclosure, fence, lamp, light, notice or sign;
 - (i) make any excavation in or disturbs the surface of such property;
 - (j) climbs or sits upon, hangs onto or mounts any such property;
 - (k) introduces any objects or material or erects any structure on such property;
 - (l) enters such property or remains there; or
 - (m) allows, causes or permits any other person to commit any of the aforesaid acts
- (2) A person who contravenes subsection (1) commit an offence and must, if convicted, pay to the Council the cost of remedying any loss or damage suffered by the Council as result of the commission of that offence and the cost of the removal and disposal of any material, object or structure involved in the offence.
- (3) If a person applies for the consent of the Council in terms of subsection (1), the Council may –
- (a) require the person to furnish information in support of application;
 - (b) pay a deposit or give security for the costs of removal of the thing to which the application relates and for the repair of any damage caused thereby; and

- (b) impose such conditions or restrictions as the Council deems necessary or desirable; or
 - (c) refuse content if it the act to which the application relates will or may be unlawful or will cause offence to any person or to a section of the community
- (4) If the material, object or structure is not removed in compliance with a condition impose in terms of subsection (3), or should the removal result in any damage to the property, the cost of the removal or of the repair of the damage is recoverable by the Council as a civil debt from the to whom consent was given to the extent that any deposit or security furnished in terms of subsection (3) (b) proves inadequate.

25. Offences relating to private property

- (1) a person commits an offence if on any premises he or she -
- (a) excavates or removes soil or other material in a position in relating to a boundary of the premises with other premises or a street or public place so as to or be likely to removed lateral support from those premises or that street or public place or to create a source of danger to life or damage to property;
 - (b) being the owner or occupier of such premises allows any well, pond, reservoir, pit, hole, excavation or earthwork or any tree or other vegetation on such premises to be in such a condition or to be so unprotected as to constitutes a danger to the safety of person pr property;
 - (c) causes allows anything to project from the premises over or into a street or public place, except in the an area zoned for industrial purposes under a town planning scheme, and to an extent necessarily consistent with the use to which premises are put;
 - (d) being the owner or occupier of such premises, deposits, stores or causes, allows or permits to be deposited or stored or to accumulate so as to be visible from a street or 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 or places anything to or places anything to or on any premises or any way defaces such premises, whether by the use of chalk, ink or paint or by any means whatsoever, unless he is authorized by any law to do so.

(2) A person who contravenes subsection (1) commits an offence.

(3) Should a person contravene subsection (1) (c) or (e) the Council may serve on the person a notice of compliance as contemplated in section 31.

26. Cleaning of sidewalk and verge

(1) An occupier of premises which are a factory or in or on which there is carried on any business, occupation or trade must at all times –

- (a) while any activity is being carried on in the factory;
- (b) while the premises are open for business;
- (c) while the occupation or trade is being carried on; or
- (d) during business hours,

Whichever is applicable, keep any sidewalk or verge which abuts or adjoins the premises, including the gutter and kerb, free of litter and put and keep the same in a clean and satisfactory state and to this end remove all litter there from.

(2) The occupier must cause all litter removed to be placed in refuse receptacles provided by on behalf of the Council or, with the written consent of an official, to be disposed of in a manner approved of by the official.

(3) A person who contravenes subsection (1) or subsection (2) commits an offence.

27 Begging and gambling

(1) No person may, in a public place –

- (a) beg for money or goods or ask for or solicits anything, whether by gesture, word or otherwise;
- (b) cause or induce another person to beg for money or goods or ask for or solicits anything, whether by gesture, word or otherwise; or
- (c) gamble or play any game for gain, whether monetary or otherwise.

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

28. Vagrancy

- (1) A person who leads –
- (a) a vagrant life and who has no ascertainable and lawful means of livelihood; or
 - (b) an idle, dissolute or disorderly life, may not enter or be in a public place.
- (2) A person who contravenes subsection (1) commits an offence.

29. Camping and sleeping

- (1) No person may, in a public place or on any premises or property owned by or under the control of the Council, which public place, premises or property is not intended to be used for such purpose –
- (a) camp, sleep or use any portion thereof for the purpose of habitation, except with the express permission of the Council;
 - (b) lie and sleep on any bench or seat provided for the use of the public.
- (2) A person who contravenes subsection (1) commits an offence

CHAPTER 2

ENFORCEMENT

30. Disposal of property found in street or public place

- (1) When anything has been left in a street or public place in contravention of section 22 (1) (a) an official or police officer may remove it to a store established by the Council for the purpose, however if such if such thing is of no commercial value he or she may dispose of the thing in such manner as he or she deems fit, and the person who has committed the offence is liable to the Council for the costs of such disposal as determined by the official or police officer.
- (2) A thing which has been removed a store in terms of subsection (1) may be released to any person who, within seven days after the removal or within such longer period as may be allowed by the official in charge of the store, proves to the officials that he or she is its owner or is entitled to possession the thing, after payment of the cost of the removal and storage as determined by the official in accordance with a prescribed tariff of charges, however, the official may cause a

thing which is of a perishable nature and has not been claimed before it has ceased to have a commercial value or before it has become offensive or danger to health, to be destroyed or otherwise disposed of in such manner as he or she deems fit or to be removed to a municipal refuse dump.

- (3) A thing which has not been released or disposed of in terms of subsection (2) shall be sold in such notice as the authorized officer in charge of the store deems fit, having regard for its nature.
- (4) The proceeds of any sale in terms of subsection (3) shall first be applied in payment of:
 - (a) The cost of removal and storage as determined in terms of subsection (2);
 - (b) any costs which may have been incurred in attempting to trace the owner; and
 - (c) the cost of sale,

And the balance is forfeited to the Council if not claimed within one year from the date of sale by a person who establishes his or her legal right thereto.

- (5) If the proceed of the sale are not sufficient to meet the costs referred to in subsection (4) the owner of the things sold and the person who committed any offence in terms of these By- law in relation thereto are jointly and severally liable to the Council for payment of the unsatisfied balance.
- (6) If the thing cannot be sold in terms of subsection (3), the official in charge of the store may dispose thereof in such manner as he or she deems fit and the provisions of subsection (5) apply, with the necessary changes in respect of any costs incurred in effecting such disposal.
- (7) The exercise of any powers conferred by this section does not render the Council or an official or police officer liable for any loss or theft of or any damage to removed in terms of subsection (1).

31. Notice of compliance and representations

- (1) A notice of compliance must state –
 - (a) the name and residential and postal address, if either or both of these be known, of the affected person;

- (b) the condition which was imposed and which has not been complied with, or the provision which has not been complied with in terms of these by- laws;
- (c) in sufficient detail to enable compliance with the notice, the measures required to remedy the situation;
- (d) that the person must within a specified time period take the measures to comply with the notice, to diligently continue with the measures, and to complete the measures before a specified date;
- (e) that failure to comply with the requirements of the notice within the period contemplate in paragraph (d) is an offence;
- (f) that written representations, as contemplated in subsection (3), may within the time period stipulated under paragraph (d) above, be made to Council at a specified place.

(2) Council, when considering any measure or time period envisaged in subsection (1) (c) and (d), must have regard to –

- (a) the principles and objectives of these by- laws;
- (b) the nature of the non-compliance;
- (c) any measures proposed by the person on whom measures are to be imposed; and
- (d) any other relevant factors.

(3) A person may within the time period contemplated in subsection (1) (f) make representations, in the form of a sworn statement or affirmation to Council at the place specified in the notice.

(4) Representations not lodged within the time period will not be considered, except where the person has shown good cause and Council condones the lodging of the representations

(5) Council must consider the representations and any response thereto by an authorized official or any other person, if there be such a response.

(6) Council may, on its own volition, conduct any further investigations to verify the facts if necessary, and the results of the investigations must be made available to the person, who must be given an opportunity of making a further response if he or she so wishes, and Council must also consider the further response.

- (7) Council must, after consideration of the representations and response, make an order in writing and serve a copy of it on the person.
- (8) The order must –
 - (a) set out the finding of Council;
 - (b) confirm, alter or set aside in whole or part, the notice of compliance; and
 - (c) specify a period within which the person must comply with the order made by the Council
- (9) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, Council will inform the person that he or she –
 - (a) must discharge the obligations set out in the notice; or
 - (b) may elect to be tried in court.
- (10) If the person elects to be tried in court he or she must, within seven calendar days, notify Council of his or her intention to be so tried.
- (11) If the person does not elect to be tried in court, he or she must, within the prescribed manner and time discharges his or her obligations under the order.
- (12) Where there has been no compliance with the requirements of a notice, the Council may take such steps as it deems necessary to remove the remedy the situation and the cost thereof must be paid to the Council in accordance with section 32.

32. Costs

- (1) Should a person fail to take the measures required of him or her by notice, Council may, subject to subsection (3) recover all costs incurred as a result of it acting in terms of paragraph 31(12) from that person and any or all of the following persons:
 - (a) the owner of the land, building or premises; 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; or
- (2) The cost claimed must be reasonable and may include, without being limited to, costs relating to labour, water, equipment, administrative and overhead costs.

- (3) If more than one person is liable for costs incurred, the liability must be apportioned among the person concerned according to the degree to which each was responsible for the emergency resulting from their respective failures to take the required measures.

CHAPTER 3

MISCELLANEOUS PROVISIONS

33. Offence relating to officials

- (1) No person may –
- (a) assault, resist, obstruct, hinder, delay or interfere with any official or police officer in the exercise of his or her powers or the performance of his or her duties or functions or in any other way attempt to prevent the exercise of such powers or the performance of such duties or functions;
 - (b) offer any inducement to any such official or police officer or make any threat, whether of violence or otherwise, in relation to such member or member of his or her family or a person dependent on him or her property in order to persuade or prevent such member from exercising any of his or her powers or performing any of his or her duties or functions;
 - (c) not being an official, by words, conduct or demeanour pretend that he or she is such a member, or
 - (d) not being an official, wear a uniform or part of a uniform or an insignia designed or intended for use by an official of the Highlands Municipality, or an imitation of such uniform or insignia.
- (2) A person who contravenes subsection (1) commits an offence.

34. Penalties

- (1) A person is guilty of a continuing offence if he or she continues to commit an offence after –
- (a) notice has been served on him or her to cease committing such offence;
 - (b) he or she has been instructed by an official to cease committing such offence; or
 - (c) he or she has been convicted of such offence.

(2) A person who is guilty of an offence under these By- laws is liable, upon conviction, to fine or imprisonment, or to imprisonment without the option of a fine or both such fine imprisonment, and in the case of continuing offence, to an additional fine or additional imprisonment, or to such additional imprisonment without the or option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued.

35. 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 these By-laws, the employer is deemed also to have performed the act or to be guilty of omission and the employer is liable on conviction to the penalties referred to in section 34, 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 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 shall also be liable to prosecution for the offence.

(4) In any prosecution for an offence under these By-laws an allegation in charge concerned that any place was situate 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 these By-laws the accused is deemed to know the provisions of these By-laws 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.

36. Application of other by-laws

The provisions of these By-laws are in addition to and not in substitution for any provision in any by-law in which particular nuisances or offensive conditions are controlled, and if a provision in these By-laws is inconsistent with any provision of such other by-law applies.

37. Repeal

By-laws on nuisances and offensive conditions previously made by the Council or its constituent predecessors in respect of any portion of the area of the Highlands Municipality are hereby repealed in so far as they are inconsistent with the provisions of these By-laws.

38. Short title and commencement

These By-laws may be cited as the Highlands Municipality Nuisances and Offensive Conditions By-laws, 2005, and commence on a date decided on by the Council.

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