

Summary of Draft Municipal Health By-law

EXPLANATORY MEMORANDUM: MUNICIPAL HEALTH BY-LAW

Purpose of summary

The purpose of the summary is to summarise the most important aspects regulated by the by-law insofar it affects the fencing of premises. Members of the public can read the summary in order to establish whether the by-law contains provisions that may affect them and which they wish to comment on. The full version of the by-law, which will be available at identified venues within the municipality, should then be consulted in preparation for public participation sessions or in order to submit written comments.

1. The legal situation

The function of environmental health services was allocated to District Municipalities by the Minister for Provincial and Local Government by virtue of his authorisation in terms of section 84(3) of the Municipal Structures Act, 1998, which was published in *Government Gazette* No. 24228 on 3 January 2003.

Since then, the National Health Act, Act 61 of 2003 came into operation on 2 May 2005. The Act, in section 32, clearly confirms the mandate of the district municipality to ensure that appropriate municipal health services are effectively and equitably provided in its area while it also endeavors to provide a definition of municipal health services.

Although vague in many respects, the definition includes a wide variety of environmental health issues which also forms the basis of the proposed by-law.

It is important to note that sections 1, 17, 20, 27, 28, 32 to 40, 42 to 52 and 54 to 64 of the Health Act, Act 63 of 1977, has not been repealed by section 93(1) of the new Act which means that the regulations promulgated under Act 63 of 1977, such as those relating to food premises, milk sheds, etc. remain operative and can be applied by the District Municipality in addition to the proposed by-law.

Nevertheless, it remains in the interest of the District Municipality to focus its activities in terms of its own Integrated Development Plan and the powers conferred upon it by section 156 of the Constitution and in particular sub-sections (2) and (5) thereof.

2. The aims and objectives of the by-law

Section 2 of the by-law sets the objective of providing a legal and administrative framework within which the District Municipality can develop and manage its municipal health obligations.

Unlike the past, the by-law provides for the involvement of its community by means of liaison forums etc. in developing norms, standards and guidelines best suited to a particular area or community. There is a clear departure from rigid enforcement of legislation in favor of a democratic and transparent approach to protect and promote the health and well-being of all the people in the district.

Although strict measures are proposed in certain cases, the by-law allows for any person to apply for exemption from any of the provisions of the by-law. Considerations for exemption would include developmental issues such as the promotion of social and economic development, access to services and affordability.

Sections 83 to 88 of the National Health Act, 2003 gives very clear directions for the operation of an environmental health inspectorate while the by-law will provide the inspectorate with a framework written with a clear conception of the local conditions.

The by-law also recognises the realities and social and economical disparities and inequalities of the past and strives to overcome such indisparities by supporting the goals and objectives of developmental local government.

3. Chapter 1: Municipal health nuisances

This chapter firstly explains the conditions under which an environmental health nuisance exists or occurs and it also deals with health risks. It refers to various conditions on different kinds of premises such as the accumulation of waste or materials and waste water and the presence rodents and vermin on premises that may create a health hazard or nuisance. It also endeavors to give substance to the definition of “health nuisance” in Act 61 of 2003 which is given as *“a situation, or state of affairs, that endangers life or health or adversely affects the well-being of a person or community”*.

Secondly, it places a prohibition on the creation, existence or occurrence of such health hazards or nuisances which may lead to further action in the case of non-compliance with any directive given by the municipality.

Thirdly it imposes a duty on all owners or occupiers of land or property to eliminate or reduce the risk of health hazards and nuisances on premises. In addition it gives clear directives to such owners or occupiers as to how such hazards or nuisances may be eliminated or reduced, failing which may also lead to further action by the municipality.

4. Chapter 2: Health nuisances arising from the keeping of animals

The keeping of animals and pets often results in the occurrence of an environmental health hazard or nuisance.

Section 15 explains the applicability of the by-law. It is important to note that it does not exclude farmers or people living on small holdings from liability where the keeping of their animals create a hazard or nuisance to other people. It provides for distances to be

kept from buildings used for educational, health care or recreational purposes or rooms that are used for human habitation.

Carcasses of dead animals or marine fauna quickly create health hazards or nuisances and incidences like these needs to be dealt with quickly and efficiently.

The chapter also deals with the keeping of bees.

5. Chapter 3: Animal establishments

The location of the animal establishments referred to in this chapter is normally determined in terms of the Zoning Schemes of local municipalities while the operation of and the requirements for dog kennels, catteries and pet shops and pet parlors must conform to the environmental health requirements of the district. These requirements are set out in sections 20 and 21.

6. Chapter 4: Accommodation establishments

The rapid development of the accommodation sector in South Africa and in the region necessitates some form of management with regard to buildings, water, sanitation and refuse removal at accommodation establishments.

This chapter prescribes certain minimum requirements for the healthy operation of such establishments and incorporates the Regulations relating to Food Premises as promulgated in terms of Act 63 of 1977.

7. Chapter 5: Child care facilities

With the changing profile of the work force where women are becoming more prominent, the demand for child care facilities is growing just as rapidly. This chapter acknowledges the importance of proper child care and sets the requirements for such facilities to promote healthy and safe conditions. The requirements are in line with the minimum requirements for child care facilities set by the department of Social Welfare.

8. Chapter 6: Swimming pools and water related recreational facilities

The quality and standards of water at swimming pools and spa baths is addressed in sections 27 to 29. The duties of swimming pool and spa bath keepers are also explained.

9. Chapter 7: Barbers, hairdressers, beauticians, body piercers and tattooists

The nature of the tools and equipment used in salons contemplated in this chapter and the fact that clients sustain cuts and piercing in many cases requires some form of management from a health point of view.

With the increasing threat of HIV/aids and other diseases, this chapter provides for the hygienic use of equipment as well as proper ventilation, water and toilet facilities in such salons.

10. Chapter 8: Waste

This chapter provides the District Municipality with further measures within numerous existing pieces of legislation to address the environmental health aspects surrounding waste and hazardous waste.

In the absence of other legislation regulating the removal, transport and disposal of health care waste, this chapter provides detailed requirements therefor.

11. Chapter 9: Water and sanitation

This chapter incorporates the provisions of the National Water Act, 1998 with regard to pollution of water and imposes a duty on the owners or occupiers of land to prevent the creation of an environmental health hazard or nuisance. It also gives certain directives in terms of which owners or occupiers should operate.

12. Chapter 10: Corpses and disturbance of mortal remains

Although the function of cemeteries and burial of the dead is a function of the local municipalities, the district municipality has a health responsibility when graves are re-opened or where exhumations take place.

13. Chapter 11: Dry-cleaning and laundries

This chapter deals with the health requirements on dry-cleaning and laundry premises and to ensure the good health of persons employed on such premises. Cleanliness of the premises and compliance with the Occupational Health and Safety Act and the Air Quality Act is also addressed.

14. Chapter 12: Enforcement

This chapter deals with the arrangements for enforcement of the by-law. It allows for the appointment of environmental health practitioners and the powers and duties of such staff.

It provides for notices of compliance that may be issued where a contravention of any of the provisions of the by-law is taking place and at the same time allows for the person receiving the notice to make representations to the municipality.

It provides for a prohibition notice that may be served to prohibit the owner or occupier of land or premises to use such premises where it may create an environmental health hazard or nuisance. As in the case of the compliance notice, the prohibition notice must state reasons for the serving of the notice and the measures to be taken to rectify the matter and the opportunity to make representations.

Sections 53 and 54 will require collaboration between the district and local municipalities in order to ensure that remedial work is undertaken where the recipient of a compliance or prohibition notice stays in default and to recover any costs incurred while undertaking such remedial steps.

14. Chapter 13: Miscellaneous provisions

This chapter provides for presumptions normally allowed in terms of legislation where prosecution takes place.

It also deals with the authentication of documents and the procedures for serving notices or documentation.

Section 58 creates the opportunity for any person who feels aggrieved to appeal against any decision taken by the municipality.

Provision is made for penalties for offenders in section 59. While the environmental health practitioner will serve notices, prosecutions will take place in terms of section 59 where the recipient fails to act in terms of the said notices. The health practitioner will still be responsible to see to the procedures and statements needed for prosecution.

Section 60 creates the opportunity for involving communities in the implementation and development of the by-law. It provides for liaison forums which may be approached whenever necessary and even to employ any skills or capacity that may exist in such forum.

Finally, section 61 provides for exemptions that may be applied for.