



UMNGENI LOCAL MUNICIPALITY: NUISANCES AND BEHAVIOUR IN PUBLIC PLACES BY- LAW (1st Draft)

NUISANCES AND BEHAVIOUR IN PUBLIC PLACES BY-LAW, 2015

To provide for measures for preventing, minimizing or managing public nuisances; to prohibit certain activities or conduct in public places; to provide for the repeal of laws and savings; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the Municipality has competence in terms of section 156 (2) of the Constitution of the Republic of South Africa to make and administer By-laws for the effective administration of the matters which it has the right to administer;

WHEREAS the Municipality has competence in terms of Part B of Schedule 5 of the Constitution relating to such matters as the control of public nuisances, municipal roads, public places, and traffic and parking;

AND WHEREAS there is a need to develop legislation to deal with the prevention or minimization of public nuisances and to regulate behavior in public places;

NOW THEREFORE The Municipal Council of the uMngeni Local Municipality, acting in terms of section 156 read with Schedule 5 Part B of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

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**CHAPTER 1
INTERPRETATION**

Definitions

1. In this By-law, unless the context otherwise indicates –

"authorised official" means a person authorised to implement the provisions of this By-law, including but not limited to–

- (a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) municipal Police Officers as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and
- (c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

“construction” means any building work or demolition and any activity ancillary to such building work or demolition;

"Head of Health" means the official of the uMngeni Local Municipality in charge of or responsible for the department of the Municipality dealing with matters relating to Public Health;

“heavy-duty vehicle” means buses and earth-moving or earth-working vehicles;

"motor-vehicle" means any self-propelled vehicle having an engine or motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by means of such engine or motor for the purposes of transportation on any road of one or more persons or any material, item, substance or object, and includes a trailer, motor-bike, quad-bike or earth-moving or earth-working vehicle, but excludes any vehicle which is controlled by a pedestrian, or any vehicle with a mass not exceeding 230 kilograms which is specially designed and constructed solely for mobility of any person suffering from some physical defect or disability;

“municipal council” or **"council"** means the uMngeni municipal council, a municipal council referred to in section 157(1) of the Constitution;

"Municipality" means uMngeni Local Municipality, a category A municipality as envisaged in terms of section 155(1) of the Constitution of the Republic of South Africa and established in terms of PN343 of 2000 (KwaZulu-Natal);

"municipal manager" means a person appointed in terms of section 54A of the Municipal Systems Act, 2000 (Act No. 32 of 2000) as the head of administration of the municipal council;

"nuisance" means any conduct or behavior by any person or the use, keeping, producing, by-producing, harboring or conveying, as the case may be, of any item, substance, matter, material, equipment, tool, vegetation or animal or causing or creating any situation or condition in or on private property or in a public place or anywhere in the Municipality which causes damage, annoyance, inconvenience or discomfort to the public or to any person, in the exercise of rights common to all or of any person;

"overnight" means the period from 20h00 in the evening to 06h00 in the morning;

"public place" means–

(a) a public road;

(b) any parking area, square, park, recreation ground, sports ground, swimming pool, sanitary lane, open space, beach, shopping centre on municipal land, unused or vacant municipal land or cemetery which has–

(i) 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, plan of subdivision or diagram;

(ii) at any time been dedicated to the public;

(iii) been used without interruption by the public for a period of at least thirty years expiring after 31 December 1959; or

(iv) at any time been declared or rendered as such by the Municipality or other competent authority;

(c) a public transportation motor-vehicle; or

(d) a municipal property, premises or facility which the public has access to,

but will not include public land that has been leased or otherwise alienated by the Municipality;

"public road" means any road, street or thoroughfare or any other place, whether a thoroughfare or not, which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes –

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

"public transportation motor-vehicle" includes any train, bus, minibus or motor- vehicle travelling on land, water or in the air, conveying members of the public at a fee; and

"waste" means any substance, whether or not that substance can be reduced, re- used, recycled and recovered–

- (a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of;
- (b) which the generator has no further use of for the purposes of production;
- (c) that must be treated or disposed of; or
- (d) that is identified as a waste by the Minister by notice in the *Gazette*,

and includes waste generated by the mining, medical or other sector, but–

- (i) a by-product is not considered waste; and
- (ii) any portion of waste, once re-used, recycled and recovered, ceases to be waste.

Interpretation of By-law

2. If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

CHAPTER 2 OBJECTS OF BY-LAW

Objects of By-law

3. The objects of this By-law are to provide–

- (a) measures to regulate and control conduct or behavior which causes or is likely to cause discomfort, annoyance or inconvenience to the public or users of any public.

place, so as ensure that any such discomfort, annoyance or inconvenience is avoided, and where total avoidance is impossible or impractical, that it is minimized and managed; and
(b) penalties for breach of its provisions.

CHAPTER 3 APPLICATION

Application of By-law

4. This By-law applies to all areas which fall under the jurisdiction of the uMngeni Local Municipality and is binding on all persons to the extent applicable.

CHAPTER 4 PROHIBITED CONDUCT

General prohibition and nuisance behaviour 5.(1) No person may in a public place–

- (a) act in a manner which is dangerous to life or which may damage property;
- (b) unlawfully enter a public place to which access has been restricted in terms of this By-law or any other law;
- (c) cause a nuisance; or
- (d) behave in an indecent, offensive or objectionable manner.

(2) No person may in a public place–

- (a) use abusive, threatening or foul language or gestures;
- (b) fight or act in a riotous or physically threatening manner;
- (c) urinate or defecate, except in a facility provided for such purpose;
- (d) bathe or wash himself or herself, except–
 - (i) in a bath or shower; or

- (ii) as part of a religious or cultural ceremony in an area where such ceremony is lawfully taking place: Provided no nuisance is caused thereby;
- (e) bathe or wash clothes, animals, or other articles;
 - (f) spit;
 - (g) perform any sexual act;
 - (h) appear in the nude or expose his or her genitalia;
 - (i) consume any liquor or be in a state of intoxication;
 - (j) use any drugs or be under the influence of drugs;
 - (k) solicit or importune any person for the purpose of prostitution, human trafficking or other illegal business;
 - (l) engage in gambling or wagering;
 - (m) start or keep a fire unless for the purposes of making a braai in an area where such activity is permitted, unless that person is authorised to make and keep such fire by the Municipality or in terms of law;
 - (n) other than a peace officer or other official or person acting in terms of the law, deposit, pack, unpack or leave any goods or articles in a public place, or cause any goods or articles to be deposited, packed, unpacked or left in a public place, other than for a reasonable period during the course of the loading, off-loading or removal of such goods or articles;
 - (o) carry or convey through a public road any object, item, material or substance which, owing to its smell, noise, vibration, size or anything to do with its nature, character or owing to the manner of its conveyance, is such that it causes or is likely to cause a nuisance, which includes but not limited to a carcass of an animal, any garbage, night-soil, refuse, litter, rubbish or manure, unless carried or conveyed in a manner allowed by law and which does not cause a greater level of discomfort, inconvenience or annoyance than that allowed by any such law;
 - (p) discharge fireworks except in accordance with the By-law of the Municipality dealing with fire and other applicable law;
 - (q) lie or sleep on any bench, seating place, street or sidewalk, or use it in such a manner that it prevents others from using it;
 - (r) beg for money or goods whether by gesture, words or otherwise;
 - (s) associate or act in concert with other persons for any purpose or in any manner which causes or is likely to cause a breach of the peace;
 - (t) behave in a manner which causes or is likely to cause a danger to himself, herself or the public;
 - (u) loiter for the purpose of or with the intention of committing an offence; or

(v) in any way cause a nuisance.

(3) The Municipality may erect signage indicating prohibited or permissible conduct in a public place for the purposes of section 5.

Vegetation

6.(1) No person may allow any tree or other growth on any premises under his or her control to–

(a) interfere with–

(i) any public service infrastructure; or

(ii) communal services infrastructure such as, but not limited to, overhead wires, storm water drainage or sewerage system; or

(b) become a source of annoyance, danger, inconvenience or discomfort to persons using a public road.

(2) The Municipality may by written notice direct the owner, occupier or person in control of premises contemplated in subsection (1) to prune or remove such tree or growth to the extent and within the period specified in such notice.

(3) If the person contemplated in subsection (2) fails to take measures contemplated in the notice issued in terms of that subsection, the Municipality may act and recover costs from that person.

(4) No person other than a duly authorised official of the Municipality may–

(a) plant a tree or plant in a public place, or in any way cut down a tree or shrub in a public place or remove it therefrom, except with the written permission of the Municipality;

(b) climb, break or damage a tree growing in a public place; or

(c) in any way mark or paint any tree growing in a public place or attach any advertisement or notice thereto.

Hanging of items on fences, walls, balconies or verandas

7. No person may dry, spread or hang washing, bedding, carpet, rags, or any other item–

(a) in a public place;

- (b) over a fence or wall which borders the verge of a public road;
- (c) on premises in such a manner that it is visible from a public road; or
- (d) on a balcony or veranda in such a manner that it is visible from a public road.

Noise

8.(1) No person may in a public place cause or permit to be caused any disturbance or impairment of the convenience or peace of any person by shouting, screaming or making any other loud or persistent noise or sound, including amplified noise or sound, except where such noise or sound is emanating from—

- (a) an authorised public meeting, gathering, congregation or event; or
- (b) an emergency or rescue announcement,

which noise or sound is normally associated with such meeting, gathering, congregation, event or situation and in accordance with the conditions of authorisation of any such meeting, gathering, congregation, event or situation.

(2) Subject to subsection (1), no person may permit noise or sound from a private residence or business premises in his or her control to be audible to users outside of such premises to such an extent that it reasonably interferes with the use and enjoyment by an owner or occupier of his or her property, except for places of entertainment as defined in the planning scheme on zoned premises where noise or sound is normally associated with the normal use of such place and in accordance with the conditions of authorisation of that business: Provided that no person may permit any noise or sound to emanate from a private residence or business premises.

(3) Notwithstanding subsections (1) and (2), no person may cause or permit to be caused any disturbance or impairment of the convenience or peace of any person within the following times:

- (a) from Sunday to Thursday, between 21h30 to 07h00; and
- (b) from Friday to Saturday, between 00h00 to 08h00.

(4) No person may place or position any loudspeaker or any sound equipment at, near or outside the entrance or door of any premises for the purposes of using that loudspeaker or sound equipment to—

- (a) make any public announcements;
- (b) invite or lure customers or any persons into that premises or other premises; or

(c) entertain any person who is in a public place.

(5) No driver or person in control of a motor-vehicle may permit any amplified sound or noise to emanate from the motor-vehicle such that it is audible at a distance of more than 50 meters.

(6) No person may blow, or cause to be blown, a hooter of a motor-vehicle in a public place in such a manner or frequency that it creates a nuisance, unless the blowing of a hooter is necessary to alert any pedestrian or any user of another motor-vehicle of any danger or to alert any user of a motor-vehicle to any act or to desist from an act which is connected with the flow of traffic or parking of motor-vehicles.

(7) No person may rev the engine of a stationary motor-vehicle in such a way that it causes nuisance in a public place: Provided that a person may rev an engine for the purposes of repairing such motor-vehicle which has broken down in or near a public place.

(8) No person may engage in any construction or cause or allow such construction to occur, in a residential area-

(a) before 07h00 and after 18h00 from Monday to Saturday; and

(b) at any time on any Sunday or public holiday, except-

(i) under circumstances where such construction is necessary in order to preserve property or the life, safety or health of persons; or

(ii) where a written exemption from paragraphs (a) and (b) were obtained from the Municipality for a specified period of time.

Litter

9.(1) No person may within a public place, deposit, dump or discard any waste or litter-

(a) in a manner that detracts from the cleanliness of such public place or which causes a nuisance; and

(b) anywhere other than in a receptacle provided by the Municipality for that purpose.

(2) No person may permit any waste or litter from any land or premises to be discarded, dumped, stored, kept or disposed of in such a manner that such waste or litter causes a nuisance.

Conduct regarding motor-vehicles 10.(1) No

person may in a public place—

- (a) wash or clean any motor-vehicle, except in an area designated by the Municipality for that purpose; or
- (b) effect any repairs to a motor-vehicle or boat, except where repairs are necessary for the purpose of removing such motor-vehicle from the place where it was involved in an accident or had a breakdown.

(2) No person may in a public place—

- (a) sleep in a stationary motor-vehicle except in an emergency, or where such person is the driver of a public transportation motor-vehicle, is guarding a motor-vehicle, or is in a designated rest area; or
- (b) reside in a motor-vehicle for longer than 24 hours,

unless that person sleeps for the purposes of resting after a long journey using that vehicle: Provided that an authorised official may at any time direct that person to move the vehicle away from such place or to desist from sleeping or residing in the vehicle.

(3) Unless permitted to do so by the Municipality or in terms of any land use scheme or legislation, no person may park a heavy-duty vehicle overnight on private premises or vacant land.

Skating, roller-skating and other dangerous acts

11.(1) No person may in a public place skate on roller-skates or a skate-board or similar device except where permitted by the Municipality.

(2) No person may in a public place do anything which may endanger the life or safety of any person or animal, including but not limited to shooting with a bow and arrow or catapult, or throwing a stone, stick or other projectile in, onto or across a public place: Provided that shooting with a pellet gun or similar object which is intended solely for recreational purposes is not prohibited if it is discharged safely.

Obstructing, blocking or disturbing of traffic and pedestrians

12.(1) No person may–

- (a) in a public place, intentionally block or interfere with the safe or free passage of a pedestrian or motor-vehicle, unless to the extent authorised by law; or
- (b) approach any pedestrian or a person inside a motor-vehicle on any public road or public road intersection or any other public place for the purposes of begging from such pedestrian or person in a motor-vehicle.

(2) Any person, who unlawfully blocks, occupies or reserves a public parking space, or begs, stands, sits, lies in a public place, or does anything which hinders or disturbs the flow of pedestrian or road traffic must immediately cease to do so when directed by an authorised official.

Excavation in public places

13.(1) No person may make or cause to be made an excavation, a pit, trench or hole in a public place–

- (a) except with the written permission of the Municipality; and
- (b) otherwise than in accordance with the requirements prescribed by the Municipality or authorised in terms of the applicable By-law of the Municipality or any other law.

(2) The provisions of subsection (1) do not prevent a person from erecting an umbrella or any other similar object in a public place: Provided that the manner in which it is erected does not result in damage to the vegetation or anything forming part of the public place concerned.

Weed-killers, herbicides, poisons or pesticides

14. No person other than an authorised official or an authorised person who administers legally approved weed-killers, herbicides, poisons or pesticides may set or cast such substances in any public place.

Municipal property

15.(1) No person, unless authorised by the Municipality or in terms of any other law, may within a public place–

- (a) deface, damage, destroy or remove any property or part thereof which is affixed, placed or erected in or on a public place;

- (b) paint or draw graffiti or other form of art or hobby on any property which forms part of a public place;
- (c) erect, build or assemble any structure, including a hut, tent, screen, bulletin board, pole, stand or stage;
- (d) affix or place on any municipal property, or distribute, any printed matter; or
- (e) plug, tamper with, or in any way damage any plumbing, electrical, heating or other fixtures or installations.

(2) The provisions of subsection (1) do not apply to any person who is employed or authorised by the Municipality for the purposes of fixing, repairing, demolishing, renovating or providing any such service for or on behalf of the Municipality.

Nuisance arising from the use of premises

16. No owner, occupier or person in control of land or premises may use or allow such land or premises to be used in a manner which creates or is likely to create a nuisance.

CHAPTER 5 GENERAL POWERS OF THE MUNICIPALITY

Goods and services offered for sale

17.(1) The Municipality may, in terms of the By-law of the Municipality dealing specifically with informal trade, designate areas within public places, where marketing, display or offering for sale of any goods or services is prohibited or controlled in order to, amongst other reasons as contemplated in such By-law, constrain nuisances.

(2) Subsection (1) does not apply to the selling of newspapers at intersections or to the sale of goods by non-governmental organisations or developmental organisations who may apply for exemption for all their traders.

(3) Notwithstanding subsection (1), the Municipality may, in terms of the By-laws contemplated in subsection (1), issue permits for the sale of goods or services, and in so

doing, the Municipality may limit the number of permits for an area and stipulate such conditions as it may from time to time prescribe.

Designated areas

18. The Municipality may in relation to any public place, to the extent empowered by law—

- (a) designate a public place or part thereof for a specific function or use at designated times or at all times, and prohibit certain activities or conduct in respect of any such public place;
- (b) develop any public place in the interest of the public;
- (c) erect, construct, establish or demolish municipal property; or
- (d) exercise any other power reasonably necessary for the discharge of its obligations in terms of this By-law relating to the management of public places or otherwise in terms of any other law.

Restricted access

19.(1) The Municipality may, by appropriate signage, restrict access to any part of a public place for a specified period of time to—

- (a) protect any aspect of the environment within a public place;
- (b) reduce vandalism and the destruction of property;
- (c) improve the administration of a public place;
- (d) develop a public place;
- (e) enable a special event which has been permitted in terms of this By-law or any other law to proceed; or
- (f) undertake any activity which the Municipality reasonably considers necessary or appropriate to achieve the purposes of this By-law.

CHAPTER 6 ENFORCEMENT

Powers of authorised officials

20.(1) The authorised official may, in respect of premises, at all reasonable times enter any land or premises on which a nuisance in terms of this By-law occurs or is alleged to occur or to have occurred and–

- (a) inspect or monitor the land or premises;
- (b) question the owner, occupier or person in control of the land or premises;
- (c) serve any compliance notice to the owner, occupier or person in control;
- (d) take photos of any items used on the land or in the premises to cause a nuisance; and
- (e) take samples or other evidence in respect of any nuisance caused.

(2) A duly authorised official may, in respect of a nuisance caused or alleged to be caused in a public place, instruct a person to cease an act or conduct which causes such nuisance, with immediate effect.

(3) If it appears to the authorised official that it is not possible for the offending person to comply with his or her instructions forthwith, the enforcement officer must issue a warning notice in the form prescribed by the Municipality, instructing the offending person to cease an act or conduct causing nuisance within a reasonable time period.

(4) When issuing a warning notice the authorised official must procure the signature of the offending person confirming receipt of a warning notice.

(5) The authorised official must inform the offending person that–

- (a) a signature of the offending party in terms of subsection (3) does not on its own constitute an admission of guilt; and
- (b) it is an offence in terms of this By-law to refuse to sign a warning notice issued by an authorised official.

CHAPTER 7 OFFENCES AND PENALTIES

Offences

21.(1) A person commits an offence if he or she–

- (a) contravenes any provision of this By-law;
- (b) contravenes any conditions, restrictions or prohibitions imposed in terms of this By-law;
- (c) fails to comply with the terms of any notice or signage displayed in terms of this By-law;
- (d) obstructs, hinders, or in any manner interferes with an authorised official who is acting or entitled to act in terms of this By-law; or
- (e) fails to obey any lawful instruction or direction given to him or her in terms of this By-law.

(2) A person is guilty of a continuing offence if he or she continues with an offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence.

Penalties

22.(1) Any person who is convicted of an offence under this By-law is liable to a fine of an amount not exceeding R10 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and imprisonment.

(2) In the case of a continuing offence, an additional fine of an amount not exceeding R200 or imprisonment for a period not exceeding 10 days, for each day on which such offence continues or both such fine and imprisonment, will be imposed.

CHAPTER 8 GENERAL PROVISIONS

Appeals

23.(1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons thereof 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.
- (3) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.
- (4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.
- (5) The appeal authority must furnish written reasons for its decision on all appeal matters.
- (6) All appeals lodged are done so in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this By-law.
- (7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

Delegations

25.(1) Subject to the Constitution and applicable national and provincial laws, any –

- (a) power, excluding a power referred to in section 160(2) of the Constitution.
- (b) function; or
- (c) duty

conferred, in terms of this By-law, upon the council, or on any of the Municipality's other political structures, political office bearers, councilors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councilor, or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) The delegation in terms of sub-section (1) must be effected in accordance with the system of delegation adopted by the council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), subject to the criteria set out in section 59(2) of said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the–

- (a) entity or person issuing the delegation or sub-delegation;
- (b) recipient of the delegation or sub-delegation; and
- (c) conditions attached to the delegation or sub-delegation.

Short title and commencement

26.(1) This By-Law is called the uMngeni Local Municipality: Nuisances and Behaviour in Public Places By-law, and takes effect six months from the date of publication thereof in the *Provincial Gazette* or on such earlier date as may be determined by the publication of a commencement notice in the *Provincial Gazette*..