

BREED VALLEY MUNICIPALITY

BY-LAW RELATING TO PREVENTION OF PUBLIC NUISANCES AND PUBLIC NUISANCES ARISING FROM THE KEEPING OF ANIMALS

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Breede Valley Municipality enacts as follows:—

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1. Definitions

In this by-law, unless the context otherwise indicates—

“**agent**”, in relation to the owner of a property, means a person appointed by the owner of the property—

- (a) to receive rental or other payments in respect of the property on behalf of the owner; or
- (b) to make payments in respect of the property on behalf of the owner;

“**animal**” means any equine, bovine, sheep, goat, poultry, camel, dog, cat, or other domestic animal or bird, or any wild animal or reptile which is in captivity or under the control of a person, or insects such as, but not limited to, bees which is kept or under control of a person, but excluding any pet;

“**bird**” means a pigeon, peafowl, pheasant, partridge, canary, budgerigar, parrot, ostrich and any other domesticated bird or wild bird which is in captivity or under control of a person;

“**cattery**” means any establishment where cats are bred or boarded;

“**district municipality**” means the Cape Winelands District Municipality established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office-bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office-bearer, councillor, agent or employee;

“**drunk**” means a person who, reason of the alcohol which he or she has consumed, has lost control of his or her mental or physical faculties, or both, to such an extent as to render him or her incapable of comporting him- or herself, or of performing any act in which he or she is engaged, with safety to him- or herself or with that regard to the rights of others which the law demands;

“**kenel**” means any establishment that has as its business the breeding, training or boarding of dogs and includes pounds whether operated by the State or otherwise;

“**municipality**” means the Breede Valley Municipality established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office-bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by

virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office-bearer, councillor, agent or employee;

“municipal manager” is the person appointed by the municipality in terms of Section 82 of the Municipal Structures Act, Act 117 of 1998, and includes a person—

- (a) acting in such position; and
- (b) to whom the municipal manager has delegated any power, function or responsibility;

“owner”—

- (a) in relation to an animal, includes the person having the possession, charge, custody or control of such animal;
- (b) in relation to property includes an occupier, lessee, servitude holder, trustee, executor, curator or assignee, agent or administrator of such property;

“pet” means a tame animal which is kept in a household;

“pet parlour” means an establishment where pets are groomed;

“pet shop” means an establishment where pets are kept for trading purposes;

“poultry” means any fowl, goose, ostrich, duck, pigeon, dove, turkey, muscovy, guinea-fowl, peacock or peahen or bird whether domesticated or wild;

“premises” means—

- (a) land or a portion of land, including a public place, whether or not a building or structure has been constructed or erected on such land or portion thereof; or
- (b) a building, structure, tent or caravan and the land on which it is situated and includes any vehicle, carriage, ship or boat;

“public nuisance” means any act or omission or condition on any premises or public place, including any building, structure or growth thereon, which is offensive or dangerous, or which materially interferes with the ordinary comfort, convenience, peace or quiet of other people or which adversely affects the safety of people, and **“nuisance”** has the same meaning;

“public place” means any land, square, building, park, recreation ground or open space which—

- (a) is vested in the municipality;
- (b) the public has the right to use; or
- (c) is shown on a general plan of a township filed in a deeds registry or a Surveyor-General’s office and has been provided for or reserved for the use of the public or the owners of erven in such township;

“responsible authority” means the Breede Valley Municipality or any national or provincial department that may in terms of its powers and functions impose conditions or restrictions in respect of the keeping of animals;

“street” means any road, street or thoroughfare or any section or part thereof which is commonly used by the public or to which the public has a right of access;

“structure” means any container, stable, shed, pigsty, kraal, aviary, paddock, covering structure, poultry house, enclosure, run, loft or building used for human shelter, business purposes or the keeping or enclosing of animals.

2. Objectives and application of by-law

- (1) The municipality, aware of the constitutional right of every person to an environment that is not harmful to his or her health or well-being, adopts this by-law with the aim of protecting and promoting the health and well-being of all people in the Breede Valley area by fostering an environment in which the public in general may enjoy peaceful and harmonious living conditions.
- (2) In the implementation of this by-law, the municipality also recognises the infrastructural, social and economical disparities and inequalities resulting from the previous local government dispensation and shall strive to overcome such disparities and inequalities by supporting the new goals for local government as laid down in section 152 of the Constitution.
- (3) Sections 4(1), 14(1), 15(1), and 21(1) do not apply to—
 - (a) premises which are legally used for bona fide agricultural purposes; or
 - (b) premises identified by the municipality where the keeping of animals or the operation of pet parlours, pet shops or catteries and kennels is permitted and indicated as such in an approved spatial development framework and zoning scheme.
- (4) A person who keeps animals on premises contemplated in subsection (3) is not exempt from the provisions relating to the inception or bringing about of a public nuisance.

CHAPTER 1

GENERAL PROVISIONS RELATING TO PUBLIC NUISANCES

3. Behaviour and conduct

- (1) No person may—
- (a) do work on or use any premises in such a manner that it interferes with the convenience or comfort of other people or that it becomes a source of danger to any person;
 - (b) subject to any approval in terms of the relevant Town Planning Scheme Regulations, carry on any trade, business, profession or hobby which causes discomfort or annoyance to other people;
 - (c) deposit, leave, spill, drop or place any fruit or vegetable peels, broken bottles, glass, refuse, building rubble, garden refuse or thing which is offensive or likely to cause annoyance, danger or injury to persons;
 - (d) allow the fencing of any premises to fall into a state of disrepair or to become unsightly or dilapidated;
 - (e) allow any building or structure or any portion thereof to fall into a dilapidated, neglected or unsightly state;
 - (f) vacant land adjoining such shop or business premises for the purpose of storing, stacking, dumping, disposing, displaying or keeping articles or merchandise;
 - (g) enclose any stoep or verandah of any shop or business premises by any means otherwise than by such means as approved by the municipality;
 - (h) disturb the comfort, convenience, peace or quiet of other people by the use of electrical appliances or machinery whether malfunctioning or not;
 - (i) defoul, misuse or damage public toilets;
 - (j) carry or convey in any street or public place, any objectionable material- or thing, which is or may become offensive or dangerous, unless such material or thing is suitably covered;
 - (k) allow any erf to be overgrown to such an extent that it may be used as a shelter by vagrants, wild animals or vermin or may threaten the safety of any member of the community;
 - (l) erect, or allow to be erected or use on any premises any structure in a manner that causes a nuisance to people; or
 - (m) by an action allow that a nuisance be created or continued;
 - (n) bathe or wash him- or herself or any animal, article or clothing in a public stream, pool, water trough, hydrant, fountain or at any place which has not been set aside by the municipality for such purpose;
 - (o) at any time disturb the public peace by making unseemly noises in any manner whatsoever;
 - (p) cause a nuisance by—
 - (i) loitering in any street or public place;
 - (ii) being drunk or under the influence of drugs;
 - (iii) soliciting or importuning any person for the purposes of prostitution or any other immoral act;
 - (iv) continuing to beg from a person or closely follow a person after such person has given a negative response to such begging;
 - (v) playing loud music or the use of music instruments on any premises;
 - (q) advertise wares or services by means of any megaphone, loudspeaker, or similar device or by insistent shouting, striking of gongs, blowing of horns or ringing of bells;
 - (r) in any street or public place use any abusive or threatening language;
 - (s) cleanse or wash any vehicle or part in any street or public place;
 - (t) discharge any fire-arm, airgun or air pistol on any premises except premises or land zoned for agricultural purposes and which does not form part of a general plan for a township.
- (2) (a) In the event of a contravention of section 3(1)(a) to (m), the municipality may issue a notice on the owner, occupier or alleged offender to terminate the action or to abate the nuisance created. In the event of non-compliance with such order and without prejudice to the municipality's right to prosecute, the municipality may take the necessary steps to remove the cause or source of the nuisance and any costs incurred in connection therewith may be recovered from the person responsible for the nuisance or the owner or occupier of the premises whether or not such owner or occupier is responsible therefore.
- (b) Where any vacant or developed premises or land in the vicinity of a street is used by unauthorised persons or where any of the materials or things mentioned in subsection (1)(c) are dumped or deposited on such premises, the municipality may serve a written notice on the owner or occupier requiring him or her to enclose or fence it in to its satisfaction by a date specified in the notice. Every such enclosure or fence must be so constructed that it will effectively prevent the entry of unauthorised persons and the dumping of materials and things.

- (3) For the application of this by-law, any action or condition on any premises that endangers the safety of any person or property or which is untidy, annoying, troublesome, offensive or disturbing to the peace of other people, shall be considered a public nuisance.
- (4) Any person who contravenes or fails to comply with any provisions of this section or fails to comply with any notice lawfully given there under is guilty of an offence.

CHAPTER 2

GENERAL PROVISIONS RELATING TO KEEPING OF ANIMALS

4. Permission to keep animals

- (1) No person may keep or permit to be kept on any premises any animals, excluding pets, without the written permission of the municipality.
- (2) Any person who applies for a permit to keep a wild animal must, when submitting an application contemplated in subsection (1), furnish the municipality with a captivity permit issued by the Department of Economic Affairs, Environment and Tourism.
- (3) The municipality may determine the number of bee hives, as well as the kind, number and gender of animals that may be kept and the areas within which the keeping of such animals will be prohibited.
- (4) In order to consider an application in terms of subsection (1), the municipality may obtain the input or comments of the owners or occupants of surrounding premises.
- (5) A person who contravenes subsection (1) or who fails to comply with a determination in subsection (3) commits an offence.

5. Plans for structures and management

The municipality may require from applicants who apply to keep animals that they must submit an application form and a detailed site plan according to specifications set by the municipality.

6. Consideration of application and imposition of conditions

- (1) The municipality may, after consideration of—
 - (a) the input or comments obtained in terms of section 4(3);
 - (b) the location, geographical features or size of the premises in respect of which the application is submitted;
 - (c) the documents and site plans submitted in terms of section 5; or
 - (d) any other information relating to the application including, but not limited to, grazing, fencing, availability of water, etc. refuse to grant consent or grant consent.
- (2) Where consent is refused, the municipality must furnish the applicant with the reasons for such refusal and at the same time advise him or her of the right of appeal in terms of section 27.
- (3) Where consent is granted, the municipality may impose conditions.

7. Visibility of structures on premises

- (1) All structures in which animals are kept must be suitably screened from any street.
- (2) A person who fails to comply with subsection (1) commits an offence.

8. Waivering of requirements and withdrawal of authorisations

The municipality may after considering conditions particular to the property and provided that no objection is received from the owners or occupants of surrounding premises, waive any or all of the requirements of this part and impose other conditions and may withdraw any consent granted in terms of section 6(3) if any of the conditions imposed are not adhered to.

9. Validity of authorisations

All authorisations to keep animals granted in terms of any by-law or regulation repealed are deemed to have been granted in terms of this by-law.

10. Duties of owner or keeper of animal

- (1) The owner or keeper of an animal—
 - (a) may not cause or allow an animal to interfere with the comfort, convenience, peace or quiet of other people;
 - (b) must provide such animal with shelter, water and proper food;
 - (c) must maintain the premises on which an animal is kept in good repair and in a neat condition in order to prevent the occurrence of a public nuisance; and
 - (d) must exercise control over his or her animals in order to prevent damage to property or gardens;
 - (e) may not leave or allow any animal to be on any section of a public road or leave such animal in a place from where it may stray onto such section of a public road.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

11. Animals kept in unsatisfactory manner

- (1) Whenever animals kept on any premises are a public nuisance, the municipality may by written notice require the owner or occupier of such premises to remove the cause of and to abate such nuisance.
- (2) The municipality may prescribe the steps that need to be taken or the work that must be done to remove the cause of and to abate any nuisance.
- (3) Any activities undertaken by the owner in terms of a notice contemplated in subsection (1) will be for such owner's own account.
- (4) If an owner fails to comply with a notice issued in terms of subsection (1) the municipality may take the steps required and recover the cost thereof from such owner.
- (5) A person who fails to comply with a notice contemplated in subsection (1) commits an offence.

12. Destruction of animals

- (1) The municipality may order the euthanization or destruction of an animal which is—
 - (a) dangerous or ferocious; or
 - (b) injured or diseased to such an extent that it would be humane to do so.
- (2) An animal to be destroyed in terms of subsection (1) must be euthanized by a registered veterinary surgeon or destroyed with such instruments or appliances and in such a manner as to inflict as little suffering as possible.
- (3) A person who fails to comply with an order contemplated in subsection (1) or who contravenes subsection (2) commits an offence.

13. Hawking of animals

- (1) No person may hawk an animal in a street or public place or from a movable structure or vehicle.
- (2) A person who contravenes subsection (1) commits an offence.

CHAPTER 3**PROVISIONS RELATING TO KEEPING OF DOGS, CATS AND PETS***Part 1—General Provisions relating to dogs, cats and pets***14. Number of dogs and cats**

- (1) Subject to the provisions of section 15, no person may, without the permission of the municipality, keep on any premises—
 - (a) more than two dogs; and
 - (b) more than two cats.
- (2) An application for permission in terms of subsection (1) must be submitted on an application form obtainable from the municipality and must contain an exposition of the breed, gender and number of dogs or cats applied for.
- (3) A restriction imposed under section 17 on the number of animals that may be kept on premises does not apply for a period of 10 weeks after the birth of a litter from an animal kept in terms of a permit.
- (4) A person who contravenes subsection (1) commits an offence.

15. Breeders of dogs and cats

- (1) A breeder of dogs or cats who wishes to keep more than two dogs or cats must obtain permission from the municipality.
- (2) The municipality may require the submission of plans and specifications of structures in which it is proposed to keep the dogs or cats as well as a site plan indicating all existing or proposed structures and fences on the premises.
- (3) A person who fails to obtain the permission of the municipality as required in subsection (1) commits an offence.

16. Breeders of pets

- (1) A person who breeds pets must obtain the approval of the municipality.
- (2) The provisions of section 15(2) are with the necessary adjustment applicable to an application in terms subsection (1).
- (3) A person who contravenes subsection (1) commits an offence.

17. Conditions and restrictions

The municipality's consent in terms of sections 4, 14(1), 15(1) and 16(1) may be subject to any conditions that the municipality, in consultation with another responsible authority, may deem fit to impose.

18. Withdrawal of permission

- (1) Where a person contravenes or fails to adhere to a condition or restriction set in terms of section 17, the municipality may, after hearing that person, withdraw its consent and may order the removal of animals from the premises for care and safekeeping by an animal welfare organisation or pound.
- (2) Any costs incurred by the municipality for the removal and safekeeping of animals in terms of subsection (1), will be recovered from the owner or keeper of such animals.

19. Dogs or cats in streets or public places

- (1) Subject to the provisions of the Public Amenities By-law, the owner or keeper of a dog or cat may not bring or allow it in a street or public place unless the dog is on a leash or the cat is under physical control.
- (2) Except in the event of a blind person being lead by a guide dog, a person in charge of a dog in a street or public place, must remove any faeces left by the dog by wrapping it in paper or plastic and disposing of it in a receptacle provided for litter or refuse.
- (3) A person who contravenes any of the provisions of subsection (1) or (2) commits an offence.

Part 2—Specific provisions relating to dogs**20. Control of dogs**

- (1) No person who owns or keeps a dog may—
 - (a) permit a bitch on heat to be in a street or public place without supervision;
 - (b) urge a dog to attack, worry or frighten any person or animal unless in self-defence;
 - (c) keep a dog if the premises is not adequately fenced to keep such dog inside when it is not on a leash; or
 - (d) permit a dog—
 - (i) to trespass on private property;
 - (ii) to constitute a hazard to traffic using any public road;
 - (iii) to constitute source of danger or injury to a person outside the premises on which such dog is kept; or
 - (iv) to be a source of danger to employees of the municipality entering such premises for the purpose of carrying out their duties. A notice to the effect that a dog is kept must be displayed in a conspicuous place.
 - (e) keep any dog which interferes materially with the comfort, convenience, peace or quiet of neighbours by—
 - (i) barking, yelping, howling or whining;
 - (ii) charging any vehicles, animals, poultry, pigeons or persons outside any premises where it is kept; or
 - (iii) by behaving in any other manner.
- (2) The municipality may seize and impound a dog which is found in a street or public place in contravention with the provisions of this by-law.
- (3) A dog impounded in terms of subsection (2) may be released to the owner upon payment of a fee determined by the municipality.
- (4) A person who contravenes a provision of subsection (1) commits an offence.

CHAPTER 4**DOG KENNELS, CATTERIES, PET SHOPS AND PET PARLOURS****21. Permission to operate**

- (1) No kennel, cattery, pet shop or pet parlour may be operated without the permission of and subject to conditions imposed by the municipality.
- (2) The person operating a kennel, cattery, pet shop or pet parlour may not conduct the business in such a manner so as to cause any nuisance or annoyance to other people.
- (3) A person who contravenes subsection (1) or (2) commits an offence.

CHAPTER 5**CO-OPERATION BETWEEN MUNICIPALITIES****22. Service delivery agreements**

In order to achieve optimal service delivery in terms of this by-law, the municipality may enter into agreements with the district municipality with which legislative and executive powers is shared.

23. Powers of municipality in case of omission by District Municipality

If the service delivery referred to in section 22 is impeded by the refusal or omission by the district municipality to execute any of the arrangements envisaged in an agreement in terms of section 22 the municipality may, subject to the principles of cooperative government as set out in section 41 of the Constitution of the Republic of South Africa, 1996, proceed to give effect to such arrangement and any expenses incurred by the municipality in giving effect to such an arrangement may be recovered from the district municipality.

CHAPTER 6**GENERAL PROVISIONS****24. Right of entry and inspection**

- (1) Any duly authorised employee of the municipality is authorised to inspect any premises within the municipal area in order to determine whether there is compliance with the provisions of this by-law; provided that a private dwelling may not be entered for routine inspection purposes.
- (2) When entering premises in terms of subsection (1), the employee must on request by any person, identify him- or herself by producing written proof of authorisation.
- (3) The authorised employee may be accompanied by a person reasonably required to assist in conducting the inspection.
- (4) Any person who fails to give or refuses access to any authorised official, or obstructs or hinders him or her in the execution of his or her duties under this by-law, or who fails or refuses to give information that he or she may lawfully be required to give to such official, or who gives false or misleading information knowing it to be false or misleading, commits an offence.

25. Service of documents and process

- (1) Whenever a notice, order, demand or other document is authorised or required to be served on a person in terms of this by-law, it shall be deemed to have been effectively and sufficiently served on such person—
 - (a) when it has been delivered to him personally;
 - (b) when it has been left at his place of residence or business in the Republic with a person apparently over the age or sixteen years;
 - (c) when it has been posted by registered or certified mail to his last known residential or businesses address in the Republic and an acknowledgment of the posting thereof is produced;
 - (d) if his address in the Republic is unknown, when it has been served on his agent or representative in the Republic in the manner provided by paragraph (a), (b) or (c); or
 - (e) if his address and agent in the Republic are unknown, when it has been posted in a conspicuous place on the immovable property (if any) to which it relates.
- (2) When any notice, order, demand or other document is authorised or required to be served on a person, it is not necessary to name him or her but it will be sufficient if he or she is described as the owner, occupier or holder of a right.

26. Transitional provisions

A person who, at the commencement of this by-law, owns a larger number of animals than the number contemplated in section 4(2) may not replace animals that die or are disposed of and must gradually reduce the number of animals that may be kept.

27. Appeal

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

28. Penalties

A person who has committed an offence in terms of this by-law is, on conviction, and subject to penalties prescribed in any other law, liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment and a further amount equal to any costs and expenses incurred by the municipality as result of any contravention.

29. Exemptions

Notwithstanding the provisions of this by-law, the municipality may exempt any person and class of persons from any or all of these requirements and may impose any other requirements it deems appropriate.

30. Liaison forums in community

- (1) The municipality may establish one or more liaison forums in a community for the purposes of—
 - (a) creating conditions for a local community to participate in the affairs of the municipality; and
 - (b) promoting a safe and healthy environment.
- (2) A liaison forum may consist of—
 - (a) a member of members of an interest group, or an affected person;

- (b) a designated official or officials of the municipality; and
 - (c) a councillor.
- (3) (a) the municipality may, when considering an application for an approval, or exemption certificate in terms of this by-law, request the input of a liaison forum;
- (b) a liaison forum or any person or persons contemplated in subsection (2) may, on own initiative submit an input to the municipality for consideration.

31. Repeal of by-laws

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality, are hereby repealed as far as they relate to matters provided for in this by-law, and insofar as it has been made applicable to the municipality by the authorisation for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998.

32. Short title and commencement

This by-law is called the Prevention of Public Nuisances and Keeping of Animals By-law and will come into operation on the date of publication thereof in the Provincial Gazette.

22 October 2008

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