

BY-LAWS FOR THE CONTROL OF PUBLIC BEHAVIOUR

[MUNICIPAL NOTICE NO. 140 OF 2000.]
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DURBAN TRANSITIONAL METROPOLITAN COUNCIL BY-LAWS FOR THE CONTROL OF PUBLIC BEHAVIOUR

The Durban Transitional Metropolitan Council and the North Central and South Central Local Councils, acting under the authority of section 160 of the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996), hereby publish the following By-laws for the Control of Public Behaviour made by the said Councils at their meeting held on 8 May 2000, which By-laws shall be deemed to have come into effect on—

1.0 General

- 1.1 Where in the opinion of the **Municipality**, any **Person** is in a state of intoxication or under the influence of a **Dependence Producing Substance** in a **Public Place**, on **Municipal Property** or at a **Local Facility**, the **Municipality** may **Order** such **Person** to leave such **Public Place**, **Municipal Property** or **Local Facility**.
- 1.2 Where in the opinion of the **Municipality**, any **Person** is loitering in a **Public Place**, on **Municipal Property** or at any **Local Facility** for the purpose or with the intention of committing an offence, the **Municipality** may **Order** such **Person** to move on to another place.
- 1.3 Whenever any **Person** in a **Public Place**, on **Municipal Property** or in a **Local Facility**—
 - (1) behaves in a manner which is disorderly, indecent or unseemly;
 - (2) uses threatening, obscene, abusive, violent, offensive or disgusting language or otherwise behaves in a violent or offensive manner;
 - (3) interferes with or molests any other **Person**;
 - (4) throws anything at any **Person** or object;
 - (5) associates or acts in concert with other **Persons** in a manner which causes or is likely to cause a breach of the peace;
 - (6) accosts, insults, jostles, threatens or harasses another **Person**;
 - (7) begs for money or goods or asks for or solicits anything, whether by gesture, word or otherwise;
 - (8) not intended and lawfully operated for such purposes, **Gambles** or **Wagers** other than in accordance with the law;
 - (9) not intended for such purposes, camps or sleeps on or uses any portion thereof for the purpose of habitation, except with the express permission of the **Municipality**;
 - (10) lies and sleeps on any bench or seat provided for the use of the public;
 - (11) invites another **Person** to fight, or otherwise
 - (12) causes a **Nuisance**,

the **Municipality** may **Order** the **Person** to cease and desist from such activity.

2.0 Offences.—Where any **Person** is ordered to do anything or to not to do something and such **Person** does not comply with such **Order**, the recipient of any such **Order** shall be guilty of an offence and liable for a **Fine** or imprisonment for a period not exceeding six months or to both such **Fine** and imprisonment.

3.0 Definitions.—Unless inconsistent with the context, the words and phrases in these By-laws shall have the following meanings ascribed to them—

Amusement Facility: Any “Amusement Facility” within the meaning of Item 1 of Schedule 5B of the **Constitution** but excluding any **Casino**, **Racing Track**, **Totalisator Depot** or other place where **Gambling** and **Wagering** is lawfully carried on;

Animal: “Animal” within the meaning of Item 4 of Schedule 4A and Item 7 of Schedule 5B to the **Constitution** being any member of any species of bird, reptile, amphibian, fish or animal other than homo sapiens;

Animal Pound: Any **Premises** on which a **Pound** has been lawfully established for the impounding and detention of **Animals**;

Beach: The area within the **City** referred to in Paragraph 3 (21) (c) of Proc 38 of 1996 and Item 33 of Schedule 2 of Proc 80 of 1996;

Boarding House: A **Building** in or at which the business of providing lodging with meals for reward is conducted for more than four **Persons**;

Building: Any building or erection of an immovable nature for whatever purpose used including in particular, but without affecting the generality of the foregoing, any tank, **Swimming Pool**, radio mast (other than a radio mast consisting of a single vertical pole), and any wall or Close Boarded Fence more than 2 m in Height and further includes—

- (1) any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with—
 - (a) the accommodation or convenience of human beings or **Animals**;
 - (b) the manufacture, processing, storage, display or sale of goods;
- (2) any reservoir or bridge or any other structure connected therewith;
- (3) any petrol pump or any flammable liquids storage tank used in connection therewith;
- (4) any part of a building including a building as defined in paragraph (1), (2) or (3); and
- (5) any consumer installation,

but excludes any open fence, post, pier, ramp, fountain, statue, fish pond, pergola or other garden ornamentation but includes any hut, sack, tent or similar structure or any other form of temporary or permanent dwelling or shelter;

Burgess: An *incola* of the **City**;

Caravan: Any **Vehicle** or similar portable, movable or towable structure including a **Trailer** and having no foundation other than wheels or jacks and so designed or constructed as to permit human occupation for dwelling or sleeping purposes;

Caravan Park: Any **Land** upon which three or more **Caravans** are accommodated or are intended to be accommodated, regardless of whether or not a charge is made for such accommodation, but does not include a site for the sale, display, storage or disposal of **Caravans**;

Casino: “Casino” within the meaning of Item 5 of Schedule 4A to the **Constitution** including, without derogating from the generality of the foregoing, any **Premises** in respect of which a Casino licence is required in terms of the KwaZulu-Natal Gambling Act, 1996 (Act No. 10 of 1996);

Cemetery: A “Cemetery” within the meaning of Item 3 of Schedule 5B to the **Constitution** which includes, without derogating from the generality of the foregoing, any place for the inhumation of corpses;

Chalet: Any self-contained **Dwelling Unit** which is part of a **Holiday Resort** excluding any such unit housing the staff of such **Holiday Resort**;

Channel includes, without detracting from its general meaning, any open drain, gutter, culvert, canal, watercourse or the like, whether natural or constructed;

City: The areas of jurisdiction of the **North Central Local Council** and the **South Central Local Council**;

Clinic: Any institution, **Building**, facility or place where **Persons** receive **Primary Health Care**;

Constitution: The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

Cremation: The disposal of corpses by burning;

Crematorium: A “crematorium” within the meaning of Item 3 of Schedule 5B to the **Constitution** being an area or **Building** set aside for **Cremation**;

Dependence-Producing Substance: Any substance or any plant from which such substance can be manufactured included in Part 1 of Schedule 2 to the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992);

Durban Transitional Metropolitan Council: The “Transitional Metropolitan Council” established *eo nomine* under Proclamation LG 123 published in the *Official Gazette* dated 31 May 1995 and re-established under Proclamations 38 and 80 of 1996 (KZN);

Facility for the Accommodation, Care and Burial of Animals: Any “Facility for the Accommodation, Care and Burial of Animals” within the meaning of Item 4 of Schedule 5B to the Constitution;

Ferry: “Ferry” within the meaning of Item 12 of Schedule 4B to the **Constitution**;

Fine: A fine of the kind referred to in section 1 (1) of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991);

Funeral Parlour: A “Funeral Parlour” within the meaning of Item 3 of Schedule 5B to the **Constitution** which includes, without detracting from its usual meaning, any **Premises** used for or intended to be used for the **Preparation of Corpses** (whether called an undertakers, a funeral directors, a funeral parlour or by any other appellation), the operation of any hearse, the removal of human remains to such **Premises** and from such **Premises** to any **Place of Worship** and from such **Place of Worship** or **Premises** to any **Cemetery** but excludes any **Mortuary**;

Gambling: “Gambling” within the meaning of Item 5 of Schedule 4A to the **Constitution** and “**Gamble**” shall have a corresponding meaning;

Hazard: Any source of or exposure to danger of **Persons**, property or the environment;

Holiday Resort: Premises consisting of one or more **Chalets** and **Land** upon which three or more **Caravans** are accommodated, or are intended to be accommodated, regardless of whether or not a charge is made for accommodation;

Hotel: Any **Premises** which is registered as an “Hotel” under any law;

Jetty: “Jetty” within the meaning, of Item 12 of Schedule 4B to the **Constitution**;

Land: Any piece of land the external surface boundaries of which are delineated on—

- (1) a General Plan or Diagram registered in terms of the Land Survey Act, 1997 (Act No. 8 of 1997), or in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937);
- (2) a Sectional Plan registered in terms of the Sectional Titles Act, (Act No. 95 of 1986); or
- (3) a Township Plan in terms of any law of the area previously described as KwaZulu,

or a portion of such land which is not so delineated and includes any such land covered by water and the airspace above such land;

Local Amenity: Any “Local Amenity” within the meaning of Item 11 of Schedule 5B to the **Constitution**;

Local Facility: Any **Local Amenity, Beach, Amusement Facility, Cemetery, Funeral Parlour, Crematorium, Facility for the Accommodation, Care and Burial of Animals, Local Sports Facility, Market, Municipal Park, Municipal Recreation Facility, Pound, Solid Waste Disposal Site, Parking Ground, Parkade, Municipal Clinic, Child Care Facility, Municipal Airport, Ferry, Pontoon, Jetty, Pier, Caravan Park, Hotel, Holiday Resort or Pension**;

Local Sports Facility: Any “Local Sports Facility” within the meaning of Item 12 of Schedule 5B 10 the **Constitution**;

Lodging House: A **Building** in or upon which the **Business** of providing lodging without meals for reward is conducted for more than four **Persons**;

Lost Property Pound: Any **Premises** on which a **Pound** has been established under any law for the impounding and detention of movable property (other than **Vehicles** or **Animals**) lost, unattended or impounded for evidential reasons in terms of any law;

Market: Any “Market” within the meaning of Item 13 of Schedule 5B to the **Constitution**;

Mortuary: Any **Building** where corpses are exposed for identification, autopsies are performed and corpses are temporarily received but excludes a **Funeral Parlour**;

Motor Vehicle: Any self-propelled **Vehicle** and includes—

- (1) a **Trailer**; and
- (2) a **Vehicle** having pedals and an engine or an electric motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by means of such pedals, engine, motor, or both such pedals and engine or motor, but does not include—
 - (a) any **Vehicle** propelled by electrical power derived from storage batteries and which is controlled by a pedestrian; or
 - (b) any **Vehicle** with a mass not exceeding 230 kg and specially designed and constructed and not merely adapted, for the use of any **Person**

suffering from some physical defect or disability and used solely by such **Person**;

Municipal Airport: Any “Municipal Airport” within the meaning of Item 7 of Schedule 4B to the **Constitution**;

Municipal Clinic: A **Clinic** vested in or operated by or on behalf of the **Municipality**;

Municipal Council: The **Organs of State** of the **Municipality** vested with municipal legislative and executive jurisdiction in respect of the **City**;

Municipality: The **North Central Local Council**, **South Central Local Council** and the **Durban Transitional Metropolitan Council** and includes any committee or **Person** delegated by any **Municipal Council** of any such **Municipality** or deemed to have been so delegated to exercise any power or carry out any duty of the **Municipality**;

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the word “ower” is intended to be “power”.)

Municipal Park: Any “Municipal Park” within the meaning of Item 15 of Schedule 5B to the **Constitution**;

Municipal Property includes all immovable property owned by, vesting in, leased by or under the control of the **Municipality** other than **Public Places** or immovable property leased from the **Municipality** by a **Person** other than a **Municipal Service Provider**;

Municipal Recreation Facility: Any **Municipal Facility** for any activity or pastime pursued for the pleasure or interest it gives;

Municipal Road: Any “Municipal Road” within the meaning of Item 15 of Schedule 5B to the **Constitution** including, without derogating from the generality of the foregoing, any **Public Municipal Road**, **Private Municipal Road** or **Private Road** but excluding any **Provincial Road** or **National Road**;

Municipal Service: Any service which the **Municipality** may provide in terms of any law;

Municipal Service Provider: A **Service Provider** providing a **Municipal Service**;

National Legislation: “National legislation” within the meaning of section 239 of the **Constitution**;

National Road: Any road established as a “national road” under any **National Legislation**;

North Central Local Council: The “Transitional Local Council” established *eo nomine* in terms of Proclamations 38 and 80 of 1996;

Nuisance: Any “Public Nuisance” within the meaning of Item 5 of Schedule 5B to the **Constitution** including, without derogating from the generality of the afore going, any **Hazard** or other condition, thing, act or omission which is offensive or injurious or which tends to prejudice the safety, good order, peace or health of the **Burgesses** of the **City** or of any part thereof or the rights or reasonable comfort, convenience, peace or quiet of any neighbourhood within the **City** and includes any act, exhibition or publication contrary to public decency or morals;

Order: When used without qualification means issue a **Police Order**;

Organ of State: “Organ of State” within the meaning of section 239 of the **Constitution**;

Parkade: A **Building** or portion of a **Building** used, constructed, designed or adapted to be used for the purpose of the **Parking** of **Motor Vehicles** for reward but excludes a **Building** in or **Land** on which **Parking Space** is required to be provided in terms of any law as long as the **Parking Space** provided does not exceed the minimum prescribed in such law by more than 50%;

Parking: “Parking” within the meaning of Item 23 of Schedule 5B to the **Constitution** including, without derogating from the generality of the foregoing, the keeping of a **Vehicle** whether occupied or not, stationary for a period of time than is longer than is reasonably necessary for the actual loading or off-loading of **Persons** or goods or the owning or possessing of any **Vehicle** so kept but does not include any such keeping of a **Vehicle** by reason of a cause beyond the control of the **Person** so keeping such **Vehicle**;

Parking Ground: **Land** used, designed, developed or adapted to be used for the purpose of the **Parking** of **Motor Vehicles** for reward but excludes **Land** on which **Parking Space** is required to be provided in terms of any law as long as the **Parking Space** provided does not exceed the minimum prescribed in such law by more than 50%;

Parking Space: An area set aside for the **Parking** of **Motor Vehicles**;

Pension: Any **Boarding House** or **Lodging House**;

Person includes, where applicable, a juristic person;

Pier: “Pier” within the meaning of Item 12 of Schedule 4B to the **Constitution**;

Place of Worship: **Premises** or portion of **Premises** used, constructed, designed or adapted to be used as a church, chapel, oratory, synagogue, mosque, temple, Sunday school or other place of public devotion;

Police Order: A verbal instruction by the **Municipality** to a **Person** to do something or refrain from doing something where the failure to comply with such instruction has a criminal sanction;

Pontoon: “Pontoon” within the meaning of Item 12 of Schedule 4B to the **Constitution**;

Pound: Any “Pound” within the meaning of Item 18 of Schedule 5B to the **Constitution** including, without derogating from the generality of the foregoing, any **Lost Property Pound**, **Vehicle Pound** or **Animal Pound**;

Premises: Any **Building** or other structure together with the **Land** on which it is situated and any adjoining **Land** occupied or used in connection with any activities carried on in such **Building** or structure, and includes any **Land** without any **Buildings** or other structures;

Preparation of Corpses: Any action aimed at the preparation of a corpse for a funeral, burial or **Cremation** and includes the embalming of such corpse for the said purposes;

Primary Health Care: Health care of a kind usually provided by a general medical practitioner;

Private Municipal Road: A **Road** on **Municipal Premises**;

Private Road: Any **Road** which is not a **Public Road**;

Provincial Legislation: “Provincial legislation” within the meaning of section 239 of the **Constitution**;

Provincial Road: Any road established as a “provincial road” under any **Provincial Legislation**;

Public Municipal Road: Any **Public Place** which is a **Municipal Road**;

Public Place: Any “Public Place” within the meaning of Item 19 of Schedule 5B including, without derogating from the generality of the afore going, any **National Road, Provincial Road, Public Municipal Road** or any other place in the **City**—

- (1) which is vested by deed of title in the **Municipality** for the use and the benefit of the public;
- (2) which, being in the ownership of the **Municipality**—
 - (a) is specifically established as or declared to be a **Public Place** in terms of any law by resolution of the **Municipality** ;
 - (b) to which the public has acquired the right to use;

Public Road: A **Road** which is a **Public Place**;

Racing: “Racing” within the meaning of Item 5 of Schedule 4A to the **Constitution**;

Racing Track: Any area where **Racing** is conducted or carried on;

Road: A **Public Road** or **Private Road** and includes, in addition to the **Roadway**—

- (a) the **Land** of which the road consists or over which the **Road Reserve** in question extends;
- (b) anything on that **Land** forming part of, connected with, or belonging to the road;
- (c) immovable property acquired for the construction of a connection between a road and another road; and
- (d) the **Roadside**;

Road Drainage Channel: A **Channel** alongside a **Roadway** primarily intended to drain **Stormwater** from such **Roadway**;

Road Reserve: The full width of a **Road** and includes the **Roadside** and the **Roadway**, in addition to any adjacent **Land** specifically acquired for the purpose of or as a result of construction;

Roadside: That portion of a **Road** not forming the **Roadway** and includes the **Verge** and any **Road Drainage Channel**;

Roadway: That portion of a **Road** improved, constructed or intended for **Vehicular Traffic**;

Service Provider: An **Organ of State** or any other **Person** contracted by the **Organ of State** to carry out any function of the **Organ of State** who is not a employee or the **Organ of State** but includes any employee or agent of such service provider;

Solid Waste: “Solid Waste” within the meaning of Item 20 of Schedule 5B to the **Constitution**;

Solid Waste Disposal Site: Any site for the disposal of **Solid Waste** demarcated as such by signage;

South Central Local Council: The “Transitional Local Council” established *eo nomine* in terms of Proclamations 38 and 80 of 1996;

Stormwater: “Stormwater” within the meaning of Item 13 of Schedule 4A of the **Constitution** including without derogating from the generality of the foregoing, any rain, surface, subterranean or spring water;

Totalisator Depot: Any shop, office or other **Premises** used for the purpose of a totalisator agency in terms of any **National** or **Provincial Legislation**;

Trailer: A **Vehicle** which is not self-propelled and which is designed or adapted to be drawn by a **Motor Vehicle** but does not include a side-car;

Vehicle: A device designed or adapted mainly to travel on wheels or crawler tracks and includes such a device which is connected with a draw-bar to a breakdown vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a **Motor Vehicle** which is being salvaged other than such a device which moves solely on railway lines;

Vehicle Pound: Any **Premises** for the impounding and detention of **Vehicles** established in terms of any law;

Vehicular Traffic: The flow or movement of **Vehicles**;

Verge: That portion of a **Public Road** which is not constructed or intended for **Vehicular Traffic**;

Wagering: “Wagering” within the meaning of Item 5 of Schedule 4A to the **Constitution**’ and

“**Wager**” has a corresponding meaning.
