

KWA SANI LOCAL MUNICIPALITY

The Council of Kwa Sani Local Municipality has in terms of Section 156 of the Constitution, 1996 (Act No. 108 of 1996), read in conjunction with sections 11 and 98 of the Local Government : Municipal Systems Act, 2000, (Act No. 32 of 2000), made the following By-laws:

DUMPING AND LITTERING BY-LAWS

1. DEFINITIONS

- (1) In these By-laws, unless the context otherwise indicates -

"Council" means a municipal council referred to in section 157(1) of the Constitution, 1996 (Act No. 108 of 1996);

"dump" means to dispose of waste in any manner other than a manner permitted by law and includes, without derogating from the generality of the foregoing, to deposit, discharge, spill or release waste, whether or not the waste is in a container or receptacle, in or at any place whatsoever, whether publicly or privately owned, including but not limited to vacant land, rivers, waterways, catchments and sewage and storm-water systems. The act of "littering", which retains its ordinary meaning, is excluded from the definition of "dump";

"person" includes a natural person, company, closed corporation, trust, association and partnership;

"waste" means any matter, whether liquid or solid or a combination thereof, which is a by-product, emission, residue or remainder of any product, process or activity and which has been discarded, but excludes any radioactive matter.

- (2) Words applying to any individual shall include persons, companies and corporations, and the masculine gender shall include females as well as males, and the singular number shall include the plural and *vice versa*.

2. DUMPING AND LITTERING

- (1) No person may -

- (a) litter or cause to permit littering of waste;
- (b) dump or cause to permit the dumping of waste.

- (2) If the provisions of subsection (1) are contravened, Council may direct, by way of a written notice in terms of subsection (5), any or all of the following persons -

- (a) any person who committed, or who directly or indirectly caused or permitted, the contravention;
- (b) the generator of the waste, whether or not the generator is responsible for the contravention;
- (c) the owner of the land or premises where the contravention took place, if the owner failed to take the steps set out in subsection (3);
- (d) the person in control of, or any person who has or had, at the time of the contravention, a right to use, the land or premises where the contravention took place, if that person failed to take the steps set out in subsection (3);

-
- (e) any person who negligently failed to prevent the contravention from taking place, to cease the contravention in a specified time, or to prevent a further contravention or the continuation of the contravention, and to take whatever steps Council considers necessary to clean up or remove the waste, to rehabilitate the affected facets of the environment and to ensure that the waste and any contaminated material which cannot be cleaned or rehabilitated, are disposed of lawfully.
 - (3) A person who owns land or premises, or who is in control of or has a right to use land or premises, may not use or permit the use of the land or premises for unlawful dumping of waste and must take reasonable steps to prevent the use of the land or premises for the purpose.
 - (4) Council may issue notices -
 - (a) for the purpose of giving directions in terms of subsection (2);
 - (b) for compelling persons to comply with their obligations under subsection (3); and
 - (c) for any other purpose under this By-law, and may, in the notice, specify a reasonable time within which the directions given in the notice must be complied with.
 - (5) In addition, or as an alternative to the steps set out in subsection (2), or if a person fails to comply with directions given in a notice issued under subsection (4), Council may itself take whatever steps it considers necessary to clean up or remove the waste, to rehabilitate the premises or place and affected facets of the environment at which the waste has been dumped and to ensure that the waste and any contaminated material which cannot be cleaned or rehabilitated are disposed of lawfully. Council may then recover the costs of taking these steps from any of the persons listed in subsection (2), who shall be jointly and severally liable therefore.
 - (6) The costs claimed under subsection (5) must be reasonable and may include, but are not limited to, labour, administrative, over head, investigation and prosecution costs.

3. OFFENCES

Any person who -

- (1) contravenes section 2(1)(a);
- (2) contravenes section 2(1)(b);
- (3) contravenes section 2(3);
- (4) fails to comply with the terms of any notice issued under section 2(4);
- (5) obstructs Council when Council is taking steps under section 2(5), is guilty of an offence.

4. PENALTIES AND CONVICTIONS

- (1) Any person guilty of an offence under section 3(1) is liable to a fine or imprisonment for a period not exceeding sixty (60) days, or to both a fine and such imprisonment.
- (2) Any person guilty of an offence under sections 3(2), 3(3), 3(4) and 3(5) is liable to a fine or imprisonment for a period not exceeding one (1) year or to both a fine and such imprisonment.
- (3) A court shall, on a second and on subsequent convictions of a person guilty of an offence under section 3(2) of this By-law, impose a sentence or a fine or imprisonment for a period not less than one (1) year, or both a fine and such imprisonment: Provided that if the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence, the court shall enter those circumstances on the record of the proceedings and may impose such a lesser sentence.
- (4) A court convicting a person of a first offence under this By-law may impose a sentence of community service in place or a fine or imprisonment.
- (5) A court may, when considering sentence, take into account as aggravating circumstances that, *inter alia* -
 - (a) a convicted person has delayed in complying with the terms of any notice or directions given to the person under this By-law;

-
- (b) a financial advantage was or would have been gained by a convicted person in consequence of the commission of the offence;
 - (c) the dumped waste posed a potential or actual threat to public health, public safety or the environment.
- (6) If a person is convicted of an offence under this By-law which has caused damage to or loss of property or which has had an adverse impact on the environment then, in addition to any other sentence it imposes, the court may –
- (a) if the property belongs to another person, and on the application of the injured person or the prosecutor acting on the instructions of the injured person, order the convicted person to pay the injured person compensation for the damage or loss in accordance with section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (b) order the convicted person to, at his or her cost, and to the satisfaction of the Council, repair the damage and/or make good the loss and/or rehabilitate the environment.
- (7) If a person is convicted of an offence under this By-law, the court may, in addition to any other punishment which it imposes, issue an order compelling the person to comply, within a period determined by the court, with the relevant provisions of this By-law or, where applicable, with the relevant provisions of any notice issued under this By-law.
- (8) If-
- (a) a manager, agent or employee does or omits to do an act, it was his or her task to do or refrain from doing and which, under this By-law, is an offence for the employer to do or refrain from doing; and
 - (b) the act or the omission of the manager, agent or employee took place because the employer failed to take all reasonable steps to prevent the act or omission;

then, the employer is guilty of the offence and proof of the act or omission by the manager, agent or employer is *prima facie* evidence that the employer is guilty under this subsection: Provided that no penalty other than a fine shall be imposed if a conviction is based on this subsection.

5. APPLICABILITY

The Council may by notice in the *Provincial Gazette*, determine that the provision of these By-laws do not apply in certain areas within its area of jurisdiction from a date specified in the notice.