

PROVINCIAL NOTICE

[NO. 184 OF 2011]

**NOTICE IN TERMS OF SECTION 14(2)(a)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000:
PUBLICATION: STANDARD DUMPING AND LITTERING BY-LAW**

I, M.G Qabathe, member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association: Free State, do hereby in terms of section 14(2)(a)(i) of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), make standard By-laws as set out in the Schedule.

SCHEDULE

DUMPING AND LITTERING BY-LAW

DEFINITIONS

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

"council" means the Local Municipality or its successor(s) in-law or any officer employed by the Council or any committee designated by the Council, acting by virtue of a delegated authority vested in him or her or it by the Council in connection with these By-laws.

"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";

"municipality" means the Local Municipality established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with these by-laws 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;

"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.

DUMPING AND LITTERING

2. (1) No person may—
- (a) litter or cause or permit littering of waste;
 - (b) dump or cause or 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),
- (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, is 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 this purpose.
- (4) Council may issue notices—
 - (a) for the purposes of giving directions in terms of subsection (2);
 - (b) for compelling persons to comply with their obligations under subsections (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, is 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, overhead, investigation and prosecution costs.

OFFENCES

3. Any person who contravenes section 2(1) is guilty of an offence.

PENALTIES AND CONVICTIONS

4.
 - (1) Any person guilty of an offence under section 3 is liable to a fine or imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.
 - (2) A court convicting a person of a first offence under this by-law may impose a sentence of community service in place of a fine or imprisonment.
 - (3) 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.
 - (4) 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.
 - (5) 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.
 - (6) If—
 - (a) a manager, agent or employee does or omits to do an act which it was his or her duty 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;

- (c) 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 must be imposed if a conviction is based on this subsection.

REPEAL OF BY-LAWS

5. Any by-laws relating to dumping and littering adopted by the municipality or any municipality now comprising an administrative unit of the Municipality is repealed from the date of promulgation of these bylaws.

SHORT TITLE

6. This by-law is called the Dumping and Littering By-law, 2011.