



**STELLENBOSCH**  
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref: 3/4/3/5/3/4

2018-02-02

## **NOTICE OF A JOINT SITTING**

### **ECONOMIC DEVELOPMENT AND PLANNING SERVICES & PROTECTION SERVICES COMMITTEE MEETING**

**TUESDAY: 2018-02-06 AT 14:00**

**TO** Ald JP Serdyn (Ms) [Chairperson: Econ. Dev. and Planning Serv.]

**COUNCILLORS** F Adams  
FJ Badenhorst  
AJ Hanekom  
L Maqeba  
RS Nalumango (Ms)  
S Schäfer

**TO** Cllr Q Smit [Chairperson: Protection Services]

**COUNCILLORS** DS Arends  
J Hendriks  
C Manuel  
NE McOmbring (Ms)  
N Sinkinya (Ms)

**Ex officio** Executive Mayor, Ald G Van Deventer (Ms)

Notice is hereby given that a Joint sitting of the Economic Development and Planning Services Committee meeting and Protection Services Committee meeting will be held in the Council Chamber, Town House, Plein Street, Stellenbosch on **Tuesday, 2018-02-06 at 14:00** to consider the attached Agenda.

ALD JP SERDYN (MS)  
CLLR Q SMIT  
**CHAIRPERSONS**

**AGENDA**

**JOINT SITTING OF THE**

**ECONOMIC DEVELOPMENT AND PLANNING SERVICES**

**&**

**PROTECTION SERVICES COMMITTEE MEETING**

**2018-02-06**

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**AGENDA      JOINT PLANNING, ECONOMIC AND PROTECTION      2018-02-06**  
**SERVICES COMMITTEE MEETING**

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<b>1.</b>	<b>OPENING AND WELCOME</b>	<b>(3/4/3/3)</b>
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<b>2.</b>	<b>COMMUNICATION BY THE CHAIRPERSON</b>	<b>(3/4/3/6)</b>
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<b>3.</b>	<b>DISCLOSURE OF INTEREST</b>	<b>(3/6/2/2)</b>
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<b>4.</b>	<b>APPLICATION FOR LEAVE OF ABSENCE</b>	<b>(3/4/3/3)</b>
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**AGENDA      JOINT PLANNING, ECONOMIC AND PROTECTION      2018-02-06**  
**SERVICES COMMITTEE MEETING**

<b>5.</b>	<b>REPORT/S FROM OFFICIALS: ECONOMIC DEVELOPMENT AND PLANNING &amp; PROTECTION SERVICES [JOINT SITTING]</b>
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<b>5.1</b>	<b>NON-DELEGATED MATTERS</b>
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<b>5.1.1</b>	<b>STELLENBOSCH MUNICIPALITY: AIR QUALITY MANAGEMENT BY-LAW</b>
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**1. PURPOSE OF REPORT**

A Draft Stellenbosch Municipality Air Quality Management By-Law (June 2017) (**APPENDIX 1**) has been prepared to give effect to the right contained in Section 24 of the Constitution of the Republic of South Africa, 1996 by controlling air pollution within the area of the municipality's jurisdiction as well as to ensure that air pollution is avoided, or where it cannot be altogether avoided, minimized and remedied. The purpose of this item is to acquire approval to circulate the draft By-law to all municipal departments for a period of 60 days for input before a final draft will be presented to Council for public participation.

**2. DRAFT STELLENBOSCH MUNICIPALITY AIR QUALITY BY-LAW**

The above draft By-law deals with, among other, the following:

- Duty of care
- Smoke emissions from premises other than dwellings
  - Application
  - Prohibition
  - Installation of fuel-burning equipment
  - Installation and operation of obscuration measuring equipment
  - Monitoring and sampling
  - Exemption
- Smoke emissions from dwellings
- Emissions caused by open burning
- Emissions that cause a nuisance
  - Prohibition
  - Compliance notice
  - Steps to abate nuisance
- Dust nuisance
- Pesticide spraying emissions
- General provisions

**3. DISCUSSION**

The purpose of this item is to acquire the approval to circulate the draft by-law to all municipal departments for a period of 60 days for input before a final draft will be presented to Council for public participation.

The appointed Air Quality / Noise Control Officer will be responsible for execution of the policy on adoption thereof.

**AGENDA      JOINT PLANNING, ECONOMIC AND PROTECTION      2018-02-06**  
**SERVICES COMMITTEE MEETING**

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**ANNEXURES**

Annexure 1    Draft Stellenbosch Municipality Air Quality By-Law (June 2017)

**RECOMMENDED**

- (a)    that approval be granted for the Draft Stellenbosch Municipality Air Quality Management By-Law (June 2017) to be circulated to all municipal departments for a period of 60 days; and
- (b)    that the inputs received during the above process be worked into a final Draft Stellenbosch Municipality Air Quality Management By-Law to be presented to Council prior to acquiring public input.

<i>Meeting:</i>	<i>Mayco: 2017-10-11</i>	<i>Submitted by Directorate:</i>	<i>Planning &amp; Economic Development</i>
<i>Ref no:</i>	<i>1/1/1/16</i>	<i>Author</i>	<i>Manager: Spatial Planning</i>
<i>Collab:</i>	<i>543661</i>	<i>Referred from:</i>	

**MAYORAL COMMITTEE MEETING: 2017-10-11: ITEM 5.3.5**

**RECOMMENDED**

- (a)    that this item be referred to a joint sitting of the Planning and Economic Development Portfolio Committee and the Protection Services Portfolio Committee, in order to advise the Executive Mayor;
- (b)    that approval be granted for the Draft Stellenbosch Municipality Air Quality Management By-Law (June 2017) to be circulated to all municipal departments for a period of 60 days; and
- (c)    that the inputs received during the above process be worked into a final Draft Stellenbosch Municipality Air Quality Management By-Law to be presented to Mayco prior to acquiring public input.

<i>Meeting:</i>	<i>Joint Planning &amp; Protection Serv: 2017-12-05</i>	<i>Submitted by Directorate:</i>	<i>Plan &amp; Econ Dev</i>
<i>Ref no:</i>	<i>1/1/1/16</i>	<i>Author</i>	<i>Manager: Spatial Planning</i>
<i>Collab:</i>	<i>543661</i>	<i>Referred from:</i>	<i>Mayco: 2017-10-11</i>

# APPENDIX 1

**STELLENBOSCH MUNICIPALITY**

**AIR QUALITY BY-LAW**

Draft June 2017

Stellenbosch Municipality, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, hereby enacts as follows:

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2. Purpose and objectives

**CHAPTER 2: DUTY OF CARE**

3. Duty to take care

**CHAPTER 3: SMOKE EMISSIONS FROM PREMISES OTHER THAN DWELLINGS**

4. Application
5. Prohibition
6. Installation of fuel-burning equipment
7. Installation and operation of obscuration measuring equipment
8. Monitoring and sampling
9. Exemption

**CHAPTER 4: SMOKE EMISSIONS FROM DWELLINGS**

10. Smoke emissions from dwellings

**CHAPTER 5: EMISSIONS CAUSED BY OPEN BURNING**

11. Emissions caused by open burning

**CHAPTER 6: EMISSIONS THAT CAUSE A NUISANCE**

12. Prohibition
13. Compliance notice
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15. Control of dust

**CHAPTER 8: PESTICIDE SPRAYING EMISSIONS**

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17. Appeal
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20. Offences and Penalties
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23. Repeal of By-laws
24. Short title and commencement



## CHAPTER 1: INTERPRETATION AND OBJECTIVES

### 1. Definitions

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

“**adverse effect**” means any actual or potential impact on the environment that impairs, or would impair the environment or any aspect of it to an extent that is more than trivial or insignificant;

“**air pollutant**” means any substance (including but not limited to dust, smoke, fumes and gas) that causes or may cause air pollution;

“**air pollution**” means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

“**atmosphere**” means air that is not enclosed by a building, machine, chimney or other such structure;

“**atmospheric emission**” or “**emission**” means energy or substance or combination of substances emanating from a point, non-point or mobile source that results in air pollution;

“**authorised person**” means any person authorised by the municipality to implement any provision of this by-law;

“**best practicable means**” means the most effective measures that can reasonably be taken to prevent, reduce or minimize air pollution, having regard to all relevant factors including, among others, local conditions and circumstances, the likelihood of adverse effects, the current state of technical knowledge and the financial implications relative to the degree of environmental protection expected to be achieved by application or adoption of the measures;

“**chimney**” means any structure or opening of any kind from or through which air pollutants may be emitted;

“**dust**” means any solid matter in a fine or disintegrated form which is capable of being dispersed or suspended in the atmosphere;

“**dwelling**” means any building or other structure, or part of a building or structure, used as a dwelling, and any outbuildings ancillary to it, but excludes shacks and informal settlements;

“**environment**” means the surroundings within which humans exist and that are made up of –

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the interrelationships among and between them; and

- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

**“fuel-burning equipment”** means any furnace, boiler, incinerator, or other equipment, including a chimney;

- (a) designed to burn or capable of burning liquid, gas or solid fuel;  
 (b) used to dispose of any material or waste by burning; or  
 (c) used to subject liquid, gas or solid fuel to any process involving the application of heat;

**“fumes”** means any pungent or toxic vapour, gas, or smoke including but not limited to diesel fumes, spray painting fumes and exhaust fumes.

**“light absorption meter”** means a measuring device that uses a light-sensitive cell or detector to determine the amount of light absorbed by an air pollutant;

**“living organism”** means any biological entity capable of transferring or replicating genetic material, including sterile organisms and viruses;

**“mobile source”** means a single identifiable source of atmospheric emission which does not emanate from a fixed location;

**“municipality”** means Stellenbosch Municipality and includes any political structure, political office bearer, duly authorised agent thereof, or a service provider fulfilling a responsibility under this by-law assigned to it in terms of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or any other law, as the case may be, or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated, to such political structure, political office bearer, agent or employee;

**“municipal manager”** means a person appointed as such by the municipality in terms of section 54A of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

**“non-point source”** means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source or fixed location, and includes veld, forest and open fires, mining activities, agricultural activities and stockpiles;

**“nuisance”** means an unreasonable interference caused by air pollution with:

- (a) the health or well-being of any person or living organism; or  
 (b) the use or enjoyment by an owner or occupier of his or her property;  
 (c) the ordinary comfort, convenience, peace or quiet of another person; and  
 (d) the natural state of the environment;

**“offensive odours”** means any smell which is considered to be malodorous or a nuisance to a reasonable person;

**“open burning”** means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, and “burning in the open” has a corresponding meaning;

“**operator**” means a person who owns or manages an undertaking, or who controls an operation or process, which emits air pollutants;

“**point source**” means a single identifiable source and fixed location of atmospheric emission, and includes smoke stacks and residential chimneys;

“**proclaimed township**” means any land unit zoned and utilized for residential purposes;

“**person**” means a natural person or a juristic person;

“**premises**” means 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 that building or structure, and includes any land without any buildings or other structures and any locomotive, ship, boat or other vessel which operates or is present within the area under the jurisdiction of the municipality or the precincts of any harbour;

“**public road**” means a road which the public has the right to use;

“**smoke**” means the gases, particulate matter and products of combustion emitted into the atmosphere when material is burned or subjected to heat and includes the soot, grit and gritty particles emitted in smoke;

“**vehicle**” means any motor, car, motor carriage, motor cycle, bus motor lorry or other conveyance propelled wholly or partly by any volatile spirit, steam, gas or oil, or by any means other than human or animal power.

## **2. Purpose and objectives**

- (1) The purpose and objectives of this by-law is:
  - (a) to give effect to the right contained in Section 24 of the Constitution of the Republic of South Africa, 1996 by controlling air pollution within the area of the municipality’s jurisdiction; and
  - (b) to ensure that air pollution is avoided, or where it cannot be altogether avoided, minimized and remedied.

## **CHAPTER 2: DUTY OF CARE**

### **3. Duty to take care**

- (1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures:
  - (a) to prevent any potential air pollution from occurring; and
  - (b) to mitigate and, as far as reasonably possible, to remedy any air pollution that has occurred.
- (2) The municipality may monitor the impact and effectiveness of the measures taken in terms of section 3(1) and, if necessary, issue instructions to a person contemplated in section 3(1) with regard to specific measures to be undertaken.

- (3) The municipality may direct any person who fails to take the measures required under section 3(1) –
- (a) to investigate, evaluate and assess the impact of specific activities and report thereon;
  - (b) to commence taking effective control measures to abate the air pollution before a given date;
  - (c) to diligently continue with those measures; and
  - (d) to complete the measures before a specified reasonable date.
- (4) Should a person fail to comply, or inadequately comply, with a directive under section 3(3), the municipality may take reasonable measures to remedy the situation.
- (5) If any person fails to take the measures required of him or her under section 3(1) or 3(2), the municipality may recover all reasonable costs incurred as a result of it acting under section 3(4) from any or all of the following persons –
- (a) any person who is or was responsible for, or who directly or indirectly contributed to, the air pollution or the potential air pollution;
  - (b) the owner of the land at the time when the air pollution or the potential for air pollution occurred, or that owner's successor in title;
  - (c) the person in control of the land or any person who has or had a right to use the land at the time when –
    - (i) the activity or the process in question is or was performed or undertaken; or
    - (ii) the situation came about; or
  - (d) any person who negligently failed to prevent –
    - (i) the activity or the process being performed or undertaken; or
    - (ii) the situation from coming about.
- (6) If more than one person is liable under section 3(5), the liability may be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under section 3(1), 3(2) and 3(3).

### **CHAPTER 3: SMOKE EMISSIONS FROM PREMISES OTHER THAN DWELLINGS**

#### **4. Application**

For the purposes of this Chapter, "premises" does not include dwellings.

#### **5. Prohibition**

- (1) Subject to section 5(2), smoke of such a density or content that obscures light to an extent greater than 40 per cent, shall not be emitted from any premises for an aggregate period exceeding three minutes during any continuous period of thirty minutes, by an owner or occupier of a premises.
- (2) This section does not apply to smoke which is emitted from fuel-burning equipment which occurs while the equipment is being started or while the equipment is being overhauled or repaired, or awaiting overhaul or repair, unless such emission could have been prevented using the best practicable means available.
- (3) If smoke is emitted in contravention of section 5(1) the owner, operator or the occupier of the premises shall be guilty of an offence.

**6. Installation of fuel-burning equipment**

- (1) No person may install, alter, extend or replace any fuel-burning equipment that is likely to cause an adverse effect on any premises without the prior written authorisation of the municipality, which may only be given after consideration of the relevant plans and specifications.
- (2) Any fuel-burning equipment installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved by the municipality shall be presumed, until the contrary is proved, to comply with the provisions of section 6(1).
- (3) Where fuel-burning equipment has been installed, altered, extended or replaced on premises in contravention of section 6(1):
  - (a) the owner and occupier of the premises and the installer of the fuel-burning equipment shall be guilty of an offence;
  - (b) the municipality may, on written notice to the owner and occupier of the premises, order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.
- (4) The municipality may on written notice to the owner and occupier of the premises:
  - (i) revoke its authorisation under section 6; and
  - (ii) order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.

**7. Installation and operation of measuring equipment**

An authorised person may give notice to any operator of fuel-burning equipment or any owner or occupier of premises on which fuel-burning equipment is used or operated, or intended to be used or operated, to install, maintain and operate measuring equipment at his or her own cost; if:

- (a) unauthorised and unlawful emissions of smoke from the relevant premises have occurred consistently or regularly;
- (b) fuel-burning equipment has been or is intended to be installed on the relevant premises which is reasonably likely in the opinion of an authorised person to emit smoke;
- (c) the person on whom the notice is served has been convicted more than once under this chapter and has not taken adequate measures to prevent further contravention of the provisions of this chapter; or
- (d) the authorised person considers that the nature of the air pollutants emitted from the relevant premises is reasonably likely to create a hazard or nuisance to human health or the environment.

**8. Monitoring and sampling**

An occupier or owner of premises, and the operator of any fuel-burning equipment, who is required to install air pollution measuring equipment in terms of section 7 must:

- (a) record all monitoring and sampling results and maintain a copy of this record for at least four years after obtaining the results;
- (b) if requested to do so by an authorised person, produce the record of the monitoring and sampling results for inspection;

- (c) if requested to do so by an authorised person, provide a written report, in a form and by a date specified by the authorised person, of part or all of the information in the record of the monitoring and sampling results; and
- (d) ensure that the air pollution measuring equipment is calibrated at least once per year or at intervals as specified by the manufacturer of the equipment and provide records of such calibration on request by the authorised person.

#### **9. Exemption**

- (1) Subject to section 21 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the municipality may grant a temporary exemption in writing from one or all the provisions of this chapter.
- (2) Any exemption granted under section 9(1) must state at least the following:
  - (a) a description of the fuel-burning equipment and the premises on which it is used or operated;
  - (b) the reasons for granting the exemption;
  - (c) the condition attached to the exemption, if any;
  - (d) the period for which the exemption has been granted; and
  - (e) any other relevant information.

### **CHAPTER 4: SMOKE EMISSIONS FROM DWELLINGS**

#### **10. Smoke emissions from dwellings**

- (1) No person may emit or permit the emission of smoke from any dwelling that may cause a nuisance.
- (2) Any person who emits or permits the emission of smoke in contravention of section 10(1) commits an offence.
- (3) Subject to section 21 and on application in writing by the owner or occupier of any dwelling, the municipality may grant temporary exemption in writing from one or all of the provisions of this chapter.

### **CHAPTER 5: EMISSIONS CAUSED BY OPEN BURNING**

#### **11. Emissions caused by open burning**

- (1) Subject to section 11(4), any person who carries out open burning of any material on any land or premises is guilty of an offence, unless the prior written authorisation of the relevant authority, which may include the imposition of further conditions with which the person requesting authorisation must comply, has been obtained.
- (2) Any person who undertakes or permits open burning to be undertaken is in contravention of section 11(1) commits an offence.
- (3) The provisions of this section shall not apply to:
  - (a) recreational outdoor barbecue or braai activities;
  - (b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes; or
  - (c) any other defined area or defined activity to which the municipality has declared this section not to apply.

**CHAPTER 6: EMISSIONS THAT CAUSE A NUISANCE****12. Prohibition**

- (1) No person may create or permit emissions that cause a nuisance.
- (2) Any person who contravenes section 12(1) commits an offence.

**13. Compliance notice**

- (1) An authorised person may serve a notice on any person whom he or she reasonably believes has committed an offence under section 20, calling upon that person;
  - (a) to abate the nuisance within a period specified in the notice;
  - (b) to take all necessary steps to prevent a recurrence of the nuisance; and
  - (c) to comply with any other conditions contained in the notice.
- (2) For the purposes of section 13(1), an authorised person may form a reasonable belief based on his or her own experience that an air pollutant was emitted from premises occupied or owned by the person on whom the compliance notice is to be served.
- (3) A compliance notice under section 13(1) may be served:
  - (a) upon the owner of any premises, by:
    - (i) delivering it to the owner, or if the owner cannot be traced or is living abroad that person's agent;
    - (ii) transmitting it by registered post to the owner's last known address, or the last known address of the agent; or
    - (iii) delivering it to the address where the premises are situated, if the owner's address and the address of the agent are unknown;
  - (b) upon the occupier of the premises, by:
    - (i) delivering it to the occupier;
    - (ii) transmitting it by registered post to the occupier at the address at which the premises are situated.
- (4) Any person who fails to comply with a compliance notice served on that person in terms of section 13(1) commits an offence.
- (5) In addition to any other penalty that may be imposed, a court may order a person convicted of an offence under section 13(4) to take steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

**14. Steps to abate nuisance**

At any time, the municipality may at its own cost take whatever steps it considers necessary in order to remedy the harm caused by the nuisance and prevent a recurrence of it, and may recover the reasonable costs so incurred from the person responsible for causing the nuisance.

**CHAPTER 7: DUST NUISANCE****15. Control of dust**

- (1) The occupier, owner or operator of any premises must take all reasonable steps to prevent the nuisance by dust caused by any activity on such premises in accordance with the National Dust Control Regulations, R. 825, 2012.
- (2) Any person who emits or permits the emission of dust in contravention of section 15(1) commits an offence.

**CHAPTER 8: PESTICIDE SPRAYING EMISSIONS****16. Pesticide Spraying Emissions**

- (1) No person may carry out or permit the spraying of pesticides, except as permitted by Section 3 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (2) Any person who contravenes section 16(1) of this by-law is guilty of an offence, as set out in section 18(1)(c) of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).

**CHAPTER 9: GENERAL PROVISIONS****17. Appeal**

- (1) A person whose rights are affected by a decision delegated by 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.
- (2) Pending confirmation, variation or revocation of the decision against which the appeal is lodged, any person appealing the said decision, unless the municipality provides otherwise:
  - (a) must nonetheless substantively comply with any obligations that may have been imposed as a result of the decision that is the subject of the appeal; and
  - (b) may not exercise any rights that may have accrued as a result of the decision that is the subject of the appeal application, provided that no other person may exercise any right that may accrue either.

**18. Municipality and State bound**

This by-law is binding on the State and the municipality.

**19. Conflict**

- (1) In the event of a conflict within any other by-law which directly or indirectly regulates air pollution, the provisions of this by-law shall prevail.
- (2) In the event of a conflict with the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004) the provisions of that Act will prevail within the area of jurisdiction of the Municipality.

**20. Offences and penalties**

- (1) Any person who contravenes any provision of this by-law commits an offence and shall, upon conviction, be 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.
- (2) It is an offence to:
  - (a) supply false information to an authorised person in respect of any issue pertaining to the by-law, or;
  - (b) to refuse to co-operate with the request of an authorised person made in terms of this by-law.



- (3) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.
- (4) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this by-law:
  - (a) to remedy the harm caused;
  - (b) to pay damages for harm caused to another person or to property, which order shall have the force and effect of a civil judgment; and
  - (c) to install and operate at the person's own expense air pollution measuring equipment in accordance with the provisions of section 9.

**21. Exemptions**

- (1) The municipality may grant temporary exemption in writing from one or all of the provisions of chapters 3, 4, and 5, provided that the municipality:
  - (a) is satisfied that granting the exemption will not prejudice the purpose referred to in section 2(1); and
  - (b) grants any exemption subject to conditions that promote the attainment of the purpose referred to in section 2(1).
- (2) The municipality may not grant an exemption under section (1) until the municipality has:
  - (a) taken reasonable measures to ensure that all persons whose rights may be detrimentally effected by the granting of the exemption, including but not limited to adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
  - (b) provided such person with a reasonable opportunity to object to the application; and
  - (c) duly considered and taken into account any objections raised.

**22. Savings**

Anything done or deemed to have been done under any other law remains valid to the extent that it is consistent with this by-law or until anything done under this by-law overrides it.

**23. 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.

**24. Short title and commencement**

This by-law shall be known as the Air Quality By-law of Stellenbosch Municipality and comes into operation on the date of publication thereof in the Provincial Gazette.

<b>5.1.2</b>	<b>STELLENBOSCH MUNICIPALITY: DRAFT NOISE CONTROL POLICY</b>
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**1.      PURPOSE OF REPORT**

A Draft Stellenbosch Municipality Noise Control Policy (June 2017) (**APPENDIX 1**) relating to the implementation of the Provincial Noise Control Regulations PN 200/2013 (**APPENDIX 2**) has been prepared. The purpose of this item is to acquire Council's approval to advertise and request the public and the relevant provincial government departments' comment on the draft noise control policy.

**2.      DRAFT STELLENBOSCH MUNICIPALITY NOISE CONTROL POLICY**

The above draft policy deals with, among other, the following:

- The purpose of the policy
- Complaints
- Disturbing Noise
- Noise Nuisance
- Machinery in Residential Areas
- Noise Exemptions
- Places of Late-Night Entertainment
- Land Use Applications with Noise Impact
- Generator Sets
- Construction Noise
- Unamplified Human Voice
- Animal Noise

The draft policy furthermore contains 11 flowcharts describing the procedures to be followed in dealing with complaints as defined in the policy.

**3.      FINANCIAL IMPLICATIONS**

Other than advertisement fees the execution of the below recommendation will have no financial implications to Council.

The appointed Air Quality / Noise Control Officer will be responsible for execution of the policy on adoption thereof. Note that noise control by local authorities is mandatory, in terms of the Provincial Noise Control Regulations PN 200/2013, and requires essential overtime work. The financial implications in this regard must be recognised.

**4.      COMMENT FROM RELEVANT DEPARTMENTS**

The Draft Stellenbosch Municipality Noise Control Policy was distributed to all internal departments on 12 May 2017 for input by 15 June 2017. No inputs were received.

**AGENDA      JOINT PLANNING, ECONOMIC AND PROTECTION      2018-02-06**  
**SERVICES COMMITTEE MEETING**

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**ANNEXURES**

Annexure 1 Draft Stellenbosch Municipality Noise Control Policy (June 2017)

Annexure 2 Provincial Noise Control Regulations PN 200/2013

**RECOMMENDED**

- (a) that Council approves the advertisement of the Draft Stellenbosch Municipality Noise Control Policy (June 2017) for public input and the distribution of same to the relevant provincial government departments for comment; and
- (b) that the inputs received during the above public participation process be worked into a final Draft Stellenbosch Municipality Noise Control Policy to be presented to Council for approval.

**MAYORAL COMMITTEE MEETING: 2017-10-11: ITEM 5.3.6**

**RECOMMEDED**

that this item be referred to a joint sitting of the Planning and Economic Development Portfolio Committee and the Protection Services Portfolio Committee, in order to advise the Executive Mayor.

<i>Meeting:</i>	<i>Joint Planning &amp; Protection Serv: 2018-02-06</i>	<i>Submitted by Directorate:</i>	<i>Plan &amp; Econ Dev</i>
<i>Ref no:</i>	<i>1/1/1/16</i>	<i>Author</i>	<i>Manager: Spatial Planning</i>
<i>Collab:</i>	<i>543624</i>	<i>Referred from:</i>	<i>Mayco: 2017-10-11</i>

# APPENDIX 1

**STELLENBOSCH MUNICIPALITY NOISE CONTROL POLICY (JUNE 2017)**

**POLICY RELATING TO THE IMPLEMENTATION OF THE PROVINCIAL NOISE CONTROL  
REGULATIONS PN 200/2013  
(June 2017)**

This policy replaces all previous policies in this regard and must be implemented with immediate effect.

**Table of content**

This policy contains the following:

1. Definitions
2. Policy purpose
3. Complaints
4. Disturbing Noise
5. Noise Nuisance
6. Machinery in Residential Areas
7. Noise Exemptions
8. Places of Late-Night Entertainment
9. Land Use Applications with Noise Impact
10. Generator Sets
11. Construction Noise
12. Unamplified Human Voice
13. Animal Noise

Procedure Flowcharts:

1. Noise Complaints
2. Disturbing Noise Procedure
3. Noise Nuisance Procedure
4. Machinery in Residential areas
5. Noise Exemptions
6. Places of late-night entertainment
7. Land Use Application with noise impact
8. Generator Sets
9. Construction Noise
10. Unamplified Human voice
11. Animal Noise

**1. DEFINITIONS**

In these regulations a word or expression to which a meaning has been assigned in the Noise Control Regulations PN200/2013, Environment Conservation Act, 1989 (Act 73 of 1989), or the

relevant Standards South Africa publication (SANS) has the meaning so assigned and, unless the context indicates otherwise –

**“ambient noise”** means the all-encompassing sound in a given situation at a given time measured as the reading on an integrated impulse sound level meter for a total period of at least 10 minutes;

**“animal”**, in relation to a person, means any animal in the possession or under the control of that person, and includes birds and poultry;

**“authorised person”** means –

- a) a designated person;
- b) a member of the service as defined in section 1 of the South African Police Service Act, 1995 (Act 68 of 1995);
- c) a municipal police officer, traffic official, law enforcement officer or traffic warden appointed under any law; or
- d) a person who has been declared a peace officer under section 334(1) of the Criminal Procedures Act, 1977 (Act 51 of 1977);

**“complaint”** means any written complaint submitted for any noise nuisance or disturbing noise.

**“dBA”** means the sound pressure level measured in decibels which is A-weighted to approximate the response of the human ear;

**“designated person”** means a person designated or appointed by a local authority in terms of Regulation 9 of the Western Cape Noise Regulations P.N. 200/2013;

**“disturbing noise”** means a noise, excluding the unamplified human voice, which –

- (a) exceeds the rating level by 7 dBA;
- (b) exceeds the residual noise level where the residual noise level is higher than the rating level;
- (c) exceeds the residual noise level by 3 dBA where the residual noise level is higher than the rating level; or
- (d) In the case of a low-frequency noise, exceeds the level specified in Annexure B of SANS 10103;

**“emergency”** means a situation that arises suddenly and involves imminent or actual-

- a) danger to persons, or
- b) damage to property or the environment and which demand immediate action.

**“investigating officer”** means a person designated or appointed by a local authority in terms of Regulation 9 of the Western Cape Noise Regulations P.N. 200/2013;

**“local authority”** means Stellenbosch Municipality;

**“low frequency noise”** sound which contains sound energy at frequencies predominantly below 100 Hz;

**“model aircraft”** includes an unmanned recreational aircraft, whether full size or scaled down;

**“NEMA”** means the National Environmental Management Act, 107 of 1998;

**“noise nuisance”** means any sound which impairs or may impair the convenience or peace of a reasonable person;

**“noise sensitive activity”** means any activity that could be negatively impacted by noise, including residential, healthcare, educational or religious activities;

**“person”** includes a juristic person and an organ of state;

**“premises”** means a piece of land or any building or part of a building, place of residence, tent or other structure;

**“property projection plane”** means a vertical or horizontal plane, whichever is applicable on a boundary line of premises defining a boundary of the premises in space;

**“Province”** means the Province of the Western Cape;

**“public event”** means any event –

- a) to which the public or any section thereof has access, including a show, music concert, festival, sports event or any similar event; and
- b) at which any amplified music is played or reproduced;

**rating level”** means the applicable outdoor equivalent continuous rating level indicated in Table 2 of SANS 10103;

**“regulations”** means the Western Cape Noise Control Regulations, PN200/2013;

**“residual noise”** the all-encompassing sound in a given situation at a given time measured as the reading on an integrating impulse sound level meter for a total period of at least 10 minutes, excluding noise alleged to be causing a noise nuisance or disturbing noise;

**“responsible person”** means:

- (a) any person who is or was responsible for, or who directly or indirectly contributed to, the cause of noise;
- (b) the owner of the premises from where the noise originates or originated from;
- (c) the person in control of the premise or any person who has or had a right to use the premises from where the noise originates or originated from.

**“SANS 10103”** means the latest edition of Standard South Africa publication No. 10103 titled “The measurement and rating of environmental noise with respect to annoyance and to speech communication”, as amended from time to time, or corresponding replacement;

**“SANS 10117”** means the latest edition of Standard South Africa publication No.10117 titled “Calculation and prediction of aircraft noise around airports for land use purposes” as amended from time to time, or its corresponding replacement as referred to in SANS 10328;

**“SANS 10210”** means the latest edition of Standards South Africa publication No.10210 titled “Calculating and predicting road traffic noise as amended from time to time, or its corresponding replacement”, as amended from time to time or its corresponding replacement;

**“SANS 10328”** means the latest edition of Standard South Africa publication No.10328 titled “methods for environmental noise impact assessments”, as amended from time to time or its corresponding replacement;

**“SANS 658”** means the latest edition of Standard South Africa publication No.658 titled “integrating-averaging sound level meters”, as amended from time to time, or its corresponding replacement;

**“sound level”** means the equivalent continuous rating level as defined in SANS 10103, taking into account impulse, tone and night-time corrections;

**“vehicle”** means any device designed or adapted mainly to travel on wheels or crawler tracks, whether self-powered or not, other than such a device which travels solely on rails, including–

- (a) a motor vehicle;
- (b) motorcycle;
- (c) an off-road vehicle, such as a scrambler, quadru cycle or dune buggy; and
- (d) a model vehicle;

**“vessel”** means any watercraft, including –

- (a) a jet ski;
- (b) a ski boat; and
- (c) a model vessel.

## 2. POLICY PURPOSE

The purpose of this policy is:

- a) To control and manage noise by the enforcement of the Western Cape Noise Control Regulations, PN200/2013;
- b) To initiate and sustain an effective administrative structure for the control of noise, including the keeping of statistics of all noise complaints;



- c) To engage with all spheres of government, adjacent Local Authorities and other agencies whose activities may influence or affect the control of noise;
- d) To initiate and maintain a Noise Mapping program; and
- e) To raise awareness about noise pollution and the health risks associated with environmental noise.

The designated Noise Control Office is responsible for the overarching administration and implementation of all items contained in this policy unless specified otherwise. The Municipal Law Enforcement will deal with all items, as listed below in terms of “noise nuisance” as promulgated in the By-Law on the Prevention of Public Nuisances and the keeping of animals.

### 3. **COMPLAINTS** (Flowchart 1)

Noise related complaints are to be dealt with in the following manner:

- a. Incoming complaints must be logged on the complaints register.
- b. The investigating officer must determine the nature of the complaint.
- c. If a disturbing noise is confirmed, the disturbing noise procedure (flowchart 2) applies.
- d. If a noise nuisance is confirmed, the noise nuisance procedure (flowchart 3) applies.

### 4. **DISTURBING NOISE PROCEDURE** (Flowchart 2)

- a. The investigating officer is to determine the nature of the noise, whether it is a noise nuisance or noise disturbance as defined in the Regulations.
- b. Should the residual noise level differ by more than 10 dBA from the rating level, apply the SANS rating tables.
- c. Should the noise level equal or exceed the rating level by 7 dBA, a written instruction must be issued on the responsible person to cease or mitigate the noise.
- d. Should the residual noise level differ by more than 10 dBA from the rating level, the disturbing noise test procedure must be executed;
  - i. exceeds the rating level by 7 dBA;
  - ii. exceeds the residual noise level where the residual noise level is higher than the rating level;
  - iii. exceeds the residual noise level by 3 dBA where the residual noise level is lower than the rating level; or
  - iv. in the case of low-frequency noise, exceeds the level specified in Annexure B of SANS 10103.
- e. Should any of the above be violated, then apply f-h.
- f. Issue a written instruction on the responsible person to cease or mitigate the noise.
- g. Notify the complainant of the outcome of the investigation.
- h. A follow-up inspection must be conducted to establish compliance with instructions issued in terms 4(c) and (f).
- i. Should the complaint be solved, close the complaint and notify the complainant of such action.
- j. Should the complaint be unsolved, issue a summons on the responsible person.

**5. NOISE NUISANCE PROCEDURE (Flowchart 3)**

- a. The investigating officer must request the complainant to submit an affidavit in terms of Regulation 10(3).
- b. Should the complainant refuse or fail to submit a valid affidavit within 7 working days of submitting the noise complaint, the complaint may be closed.
- c. Should the complainant submit a valid affidavit, the investigating officer must validate the complaint.
- d. Should the investigating officer, after executing (c), confirm in his/her opinion that the noise does not constitute a nuisance the complaint may be closed after which the complainant must be informed accordingly.
- e. Should the investigating officer, after investigating the complaint, confirm in his/her opinion that the noise does constitute a nuisance, a written instruction must be issued on the responsible person to cease or mitigate the noise after which the complainant must be notified accordingly.
- f. A follow-up inspection must be conducted to establish compliance with instructions issued in terms 5(j).
- g. Should the complaint be unsolved, issue an appropriate fine in terms of the Admission of Guilt Fines Guidelines or a summons.
- h. Should the complaint be solved, the complaint is to be closed and complainant notified accordingly.

**6. MACHINERY IN RESIDENTIAL AREAS (Flowchart 4)**

- a. The investigating officer must measure noise levels near the property projection plane for the exceedance of 50 dBA noise level or a noise level exceedance of the residual noise level of 5 dBA.
- b. In the case of no exceedance, close complaint and notify complainant accordingly.
- c. Should the sound level exceed 50 dBA or exceed the residual noise level by 5 dBA, issue written instruction on the responsible person to cease or mitigate the noise.
- d. A follow-up inspection must be conducted to establish compliance with instructions issued in terms 6(c).
- e. Should sound level exceed 50 dBA after the follow-up inspection conducted in terms of 6(d) or exceed the residual noise by 5 dBA, issue appropriate fine in terms of the Admission of Guilt Fines Guideline.
- f. A follow-up inspection must be conducted to establish compliance with instructions issued in terms 6(c).
- g. Should the complaint be solved and the requirements met, the complaint is to be closed and complainant notified accordingly.
- h. If the requirements were not met, issue a summons on the responsible person.
- i. Should the noise level not exceed 50 dBA or not exceed the residual noise level by 5 dBA, the complaint may be closed and the complainant notified accordingly.

**7. NOISE EXEMPTIONS (Flowchart 5)**

- a. The Municipal Department tasked with considering public events must consider the application to host such an event.
- b. The applicant applying for exemption of any aspect contained in the Western Cape Noise Control Regulations, PN200/2013, or this policy is to provide reasons for the application and must provide written comment from interested and affected parties.
- c. In the case that an exemption is granted the Municipal Department tasked with considering public events must prepare an exemption document with conditions applicable to such exemption.
- d. In the case that an exemption is denied the Municipal Department tasked with considering public events must prepare a refusal document with reasons for such refusal.
- e. A Noise Impact Assessment, at the cost of the applicant, may be requested in accordance with Regulation 12(4) (c).

**8. PLACES OF LATE-NIGHT ENTERTAINMENT (Flowchart 6)**

- a. On receiving a noise complaint, the investigating officer must investigate the integrity of the existing soundproofing of the relevant place of late night entertainment in terms of disturbance noise or conditions imposed.
- b. Should the sound proofing comply to (a), the matter is closed.
- c. Should the soundproofing not comply, a written instruction must be issued on the responsible person to cease or to mitigate the noise.
- d. A follow-up inspection must be conducted to establish compliance with instructions issued in terms 8(c).
- e. Should the sound proofing comply at the time of the follow up assessment, the matter is closed.
- f. Should the sound proofing of the premises fail to comply at the time of the follow up assessment the investigating officer should:
  - i. issue an appropriate fine in terms of the Admission of Guilt Fines Guideline,
  - ii. and/or refer to law enforcement for possible impoundment.
  - iii. and/or summons the responsible person to court.

**9. LAND USE APPLICATIONS WITH NOISE IMPACT (Flowchart 7)**

- a. Land use applications with a probability of causing noise nuisance or noise disturbance must be circulated to the designated Noise Control Officer for comment.
- b. The designated Noise Control Officer may impose noise abatement or noise mitigation measures to be implemented.
- c. The investigating officer may inspect the relevant premise after construction to determine compliance with instructions issued in terms 9(b).

**10. GENERATOR SETS: SYNCHRONISED UNITS ONLY (Flowchart 8)**

- a. Applications for the installation of synchronised generator units must be circulated to the designated Noise Control Officer for comment.
- b. The designated Noise Control Officer may impose noise abatement or noise mitigation measures to be implemented.
- c. Inspection of synchronised generator units must be conducted to establish compliance with instructions issued in terms 10(b).
- d. The applicant is to inform the Noise Control Officer after the relevant generator has been installed and is ready for inspection.
- e. If, during a site inspection it is found that the generator is in working order, noise measurements may be conducted.
  - i. The results of the noise measurements must be compared to the SANS rating levels.
  - ii. Should it be found that the noise is not causing a disturbance, the application may be approved.
- f. If the noise is found to be causing a disturbance, a written request must be issued for further sound proofing.
- g. A follow-up inspection must be conducted to establish compliance with instructions issued in terms 9(f).
- h. If requirements are met, the application may be approved.
- i. If requirements are not met, section (f) to (h) must be repeated.

**11. CONSTRUCTION NOISE (Flowchart 9)**

- a. When dealing with building construction noise complaints: should the noise be within the permitted National Building Control Regulation hours, refer the complaint to Building Development Management Division for further processing, thereafter close the complaint to conclude the action taken.
- b. Should the noise not be within the permitted NBR hours, apply Flowchart 1: The Noise Complaint Procedure.

**12. UNAMPLIFIED HUMAN VOICE (Flowchart 10)**

- a. Should the noise in question be identified as human voice Regulation no. 10(4)(b) should be applied.
- b. Should no noise nuisance be evident, the investigating officer must notify the complainant of the outcome and the complaint closed.
- c. Should the noise be identified as a noise nuisance, the investigating officer must establish if Anti-Social behaviour is associated. Should Anti-Social behaviour be associated to the noise complaint, the investigating officer must hand the complaint to the Law Enforcement for further processing and the complaint closed.
- d. If a noise nuisance is confirmed, apply the Flowchart 1: Noise Complaint Process.

**13. ANIMAL NOISE** (Flowchart 11)

Should a complaint regarding animal noise be received:

- a. Apply flowchart 3: Noise Nuisance Process
- b. Apply flowchart 2: Disturbing Noise Process

PN200

NOISE COMPLAINT

FLOWCHART 1

NOISE CONTROL SECTION

INCOMING COMPLAINT

DETERMINE NATURE OF COMPLAINT

POTENTIAL NOISE  
NUISANCE

REQUEST SWORN  
AFFIDAVIT

INVESTIGATE WITHIN 5  
DAYS ON RECEIPT OF  
AFFIDAVIT

NOTIFY COMPLAINANT

VALIDATE COMPLAINT  
I.T.O REG 10(4)(b)

YES

NO

CLOSE & NOTIFY  
COMPLAINANT

ACTION: STEP 1  
LETTER/NOTICE TO  
CEASE/MITIGATE

NOTIFY COMPLAINANT

FOLLOW-UP INSPECTION

UNSOLVED

SOLVED

ACTION STEP 2  
/SUMMONS

CLOSE & NOTIFY  
COMPLAINANT

POTENTIAL NOISE  
DISTURBANCE

INVESTIGATE WITHIN 5  
DAYS

NOISE  
NUISANCE

CONFIRMED  
DISTURBING NOISE

CONDUCT NOISE SURVEY & NOTIFY  
COMPLAINANT

ACTION STEP 1: LETTER/NOTICE TO  
CEASE/MITIGATE

NOTIFY COMPLAINANT

FOLLOW-UP INSPECTION

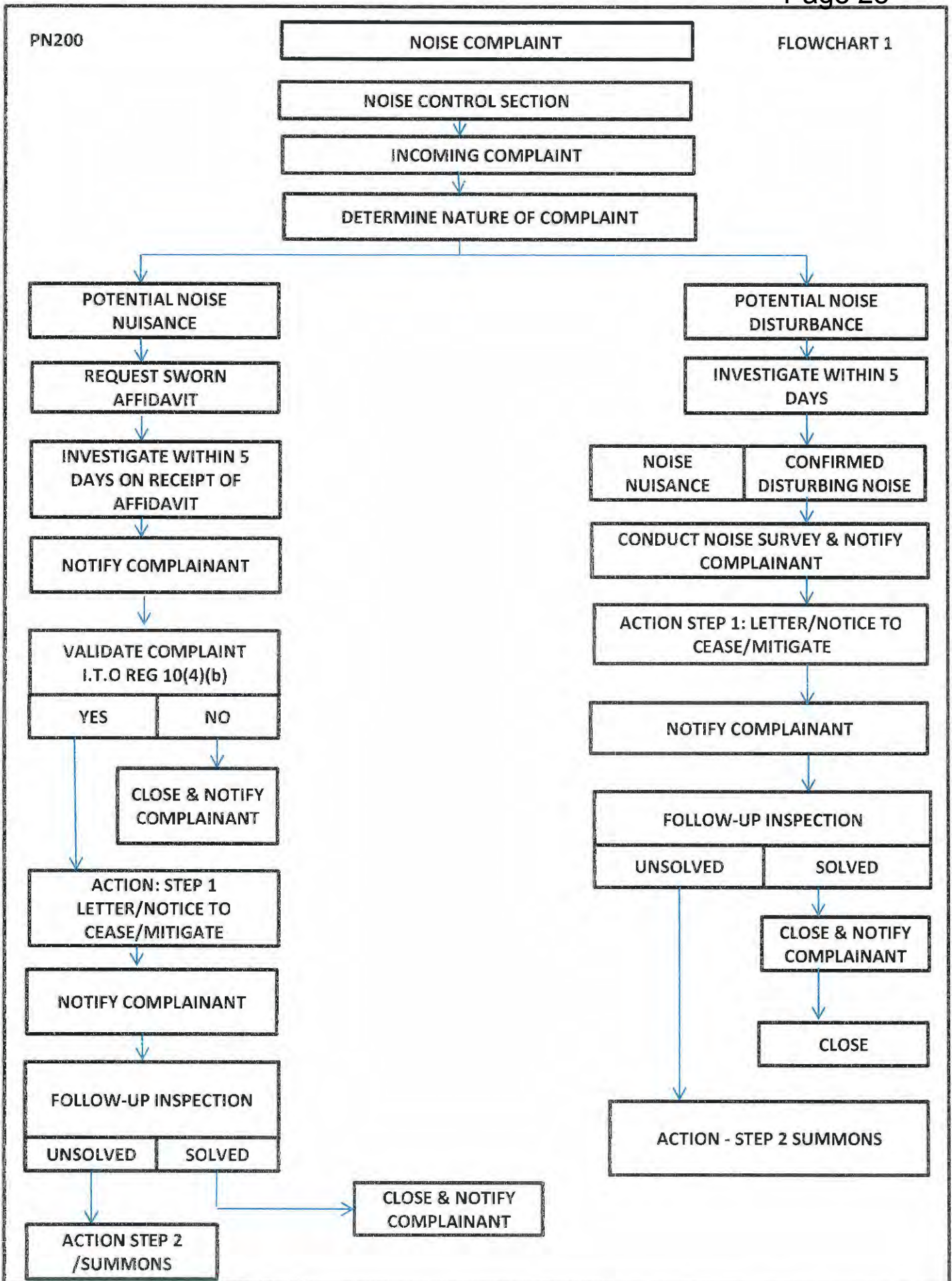
UNSOLVED

SOLVED

CLOSE & NOTIFY  
COMPLAINANT

CLOSE

ACTION - STEP 2 SUMMONS



PN200

FLOWCHART 2

**DISTURBANCE NOISE PROCEDURE**

CALCULATE OR MEASURE FOR A DISTURBANCE

NOISE VS RATING LEVEL > 10dBA

NO

YES

APPLY SANS RATING TABLE

NOISE  $\geq$  7dBA ABOVE RATING LEVEL

YES

NO

NOISE NUISANCE PROCEDURE - FORWARD FINDINGS

NONE OF THE TESTS PROVES A DISTURBANCE

MEASURE AMBIENT SOUND LEVEL

NOISE LEVEL EXCEEDS RATING BY 7 dBA

NO

YES

NOISE LEVEL EXCEEDS RESIDUAL WHERE RESIDUAL > RATING LEVEL

NO

YES

EXCEEDS RESIDUAL NOISE LEVEL BY 3 dBA WHERE RESIDUAL < RATING

NO

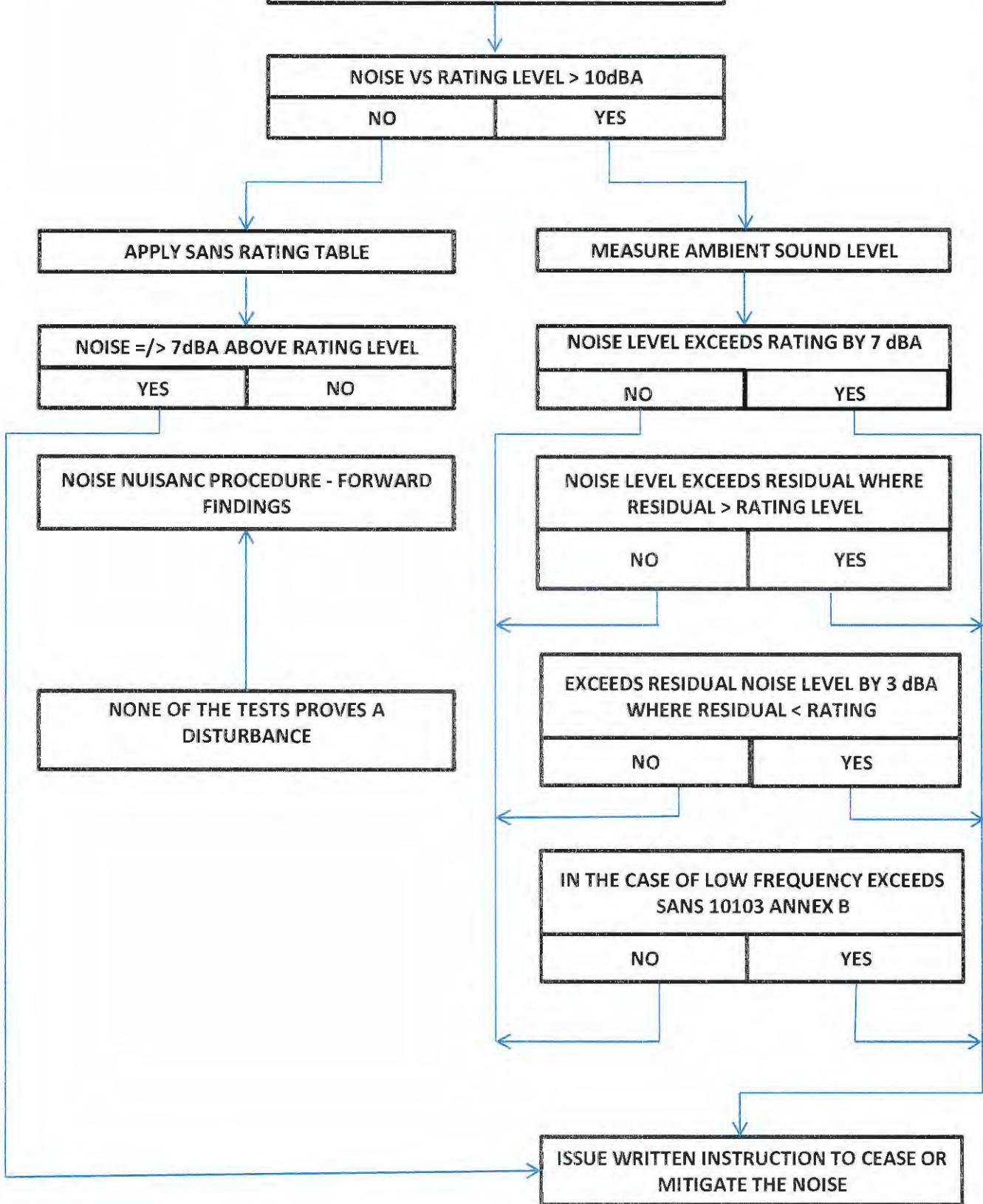
YES

IN THE CASE OF LOW FREQUENCY EXCEEDS SANS 10103 ANNEX B

NO

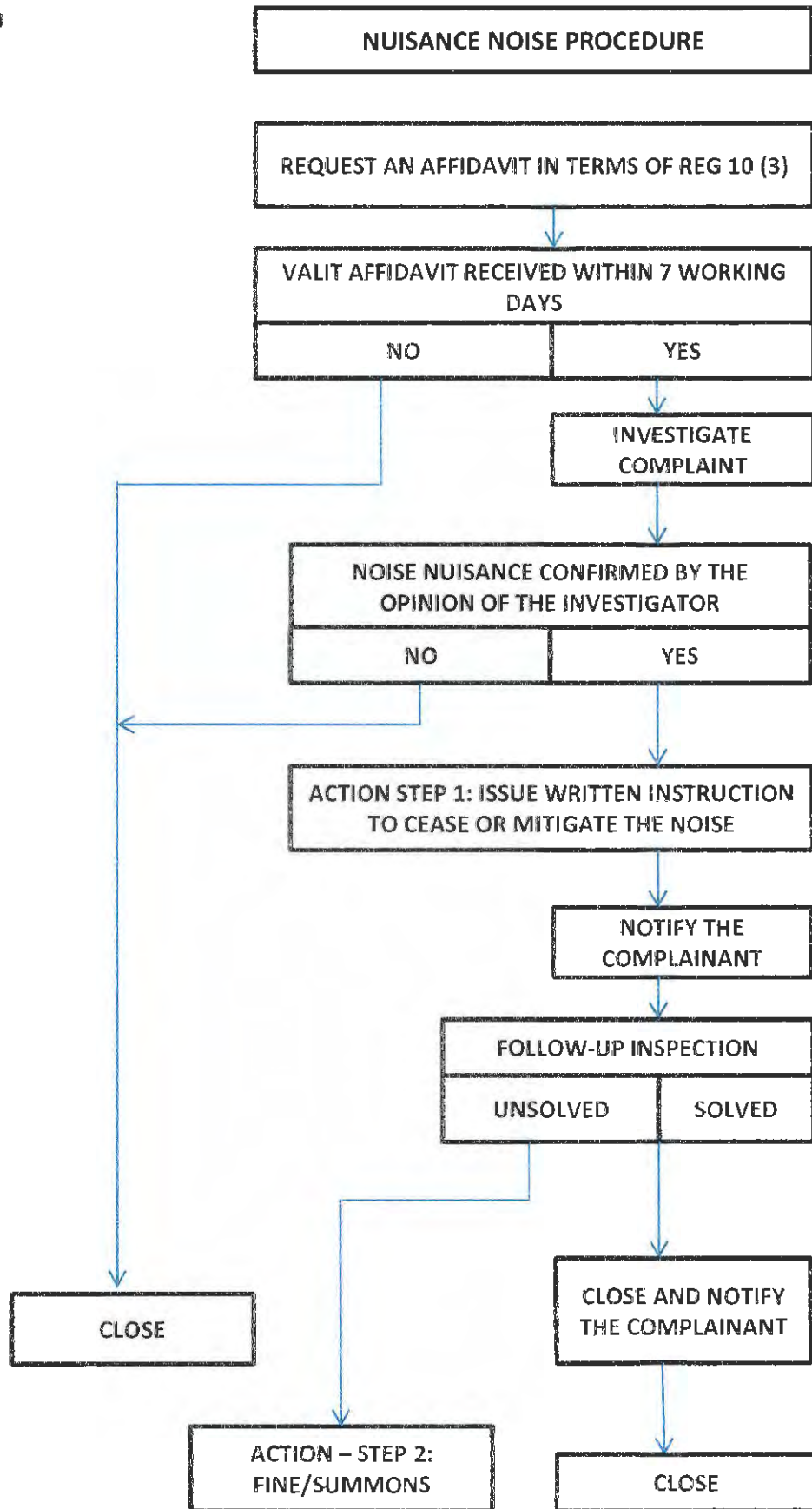
YES

ISSUE WRITTEN INSTRUCTION TO CEASE OR MITIGATE THE NOISE



PN200

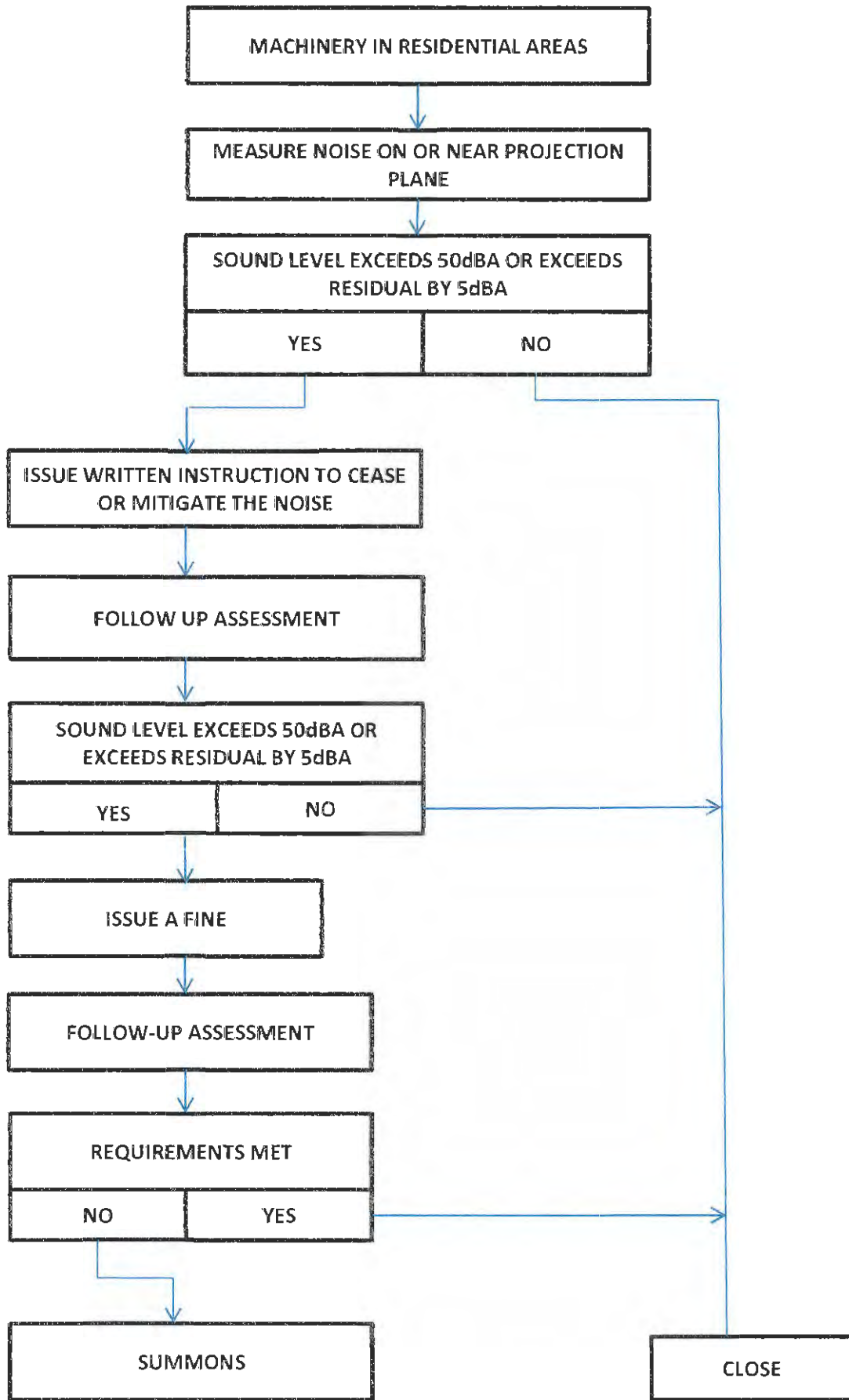
FLOWCHART 3

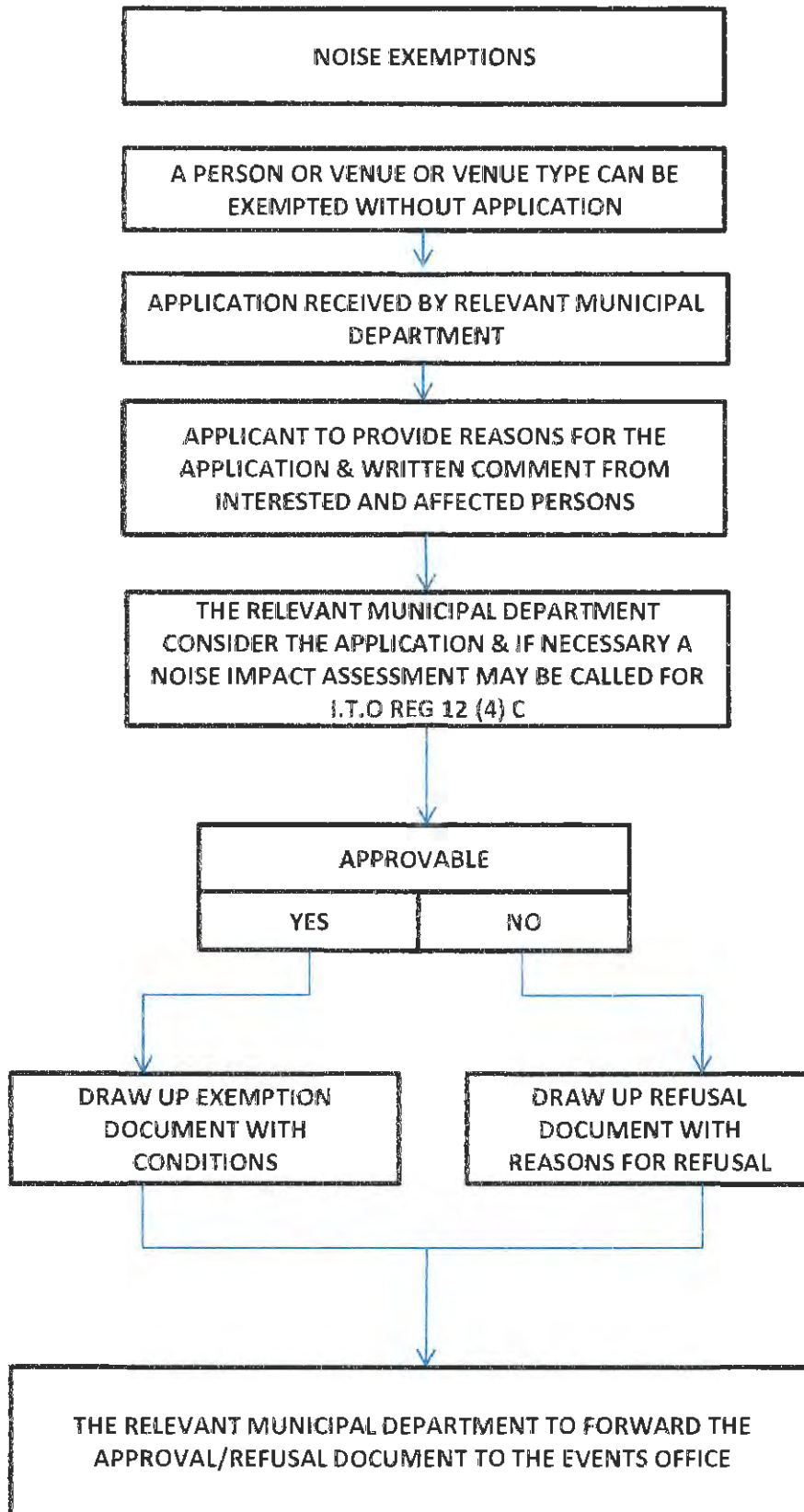




PN200

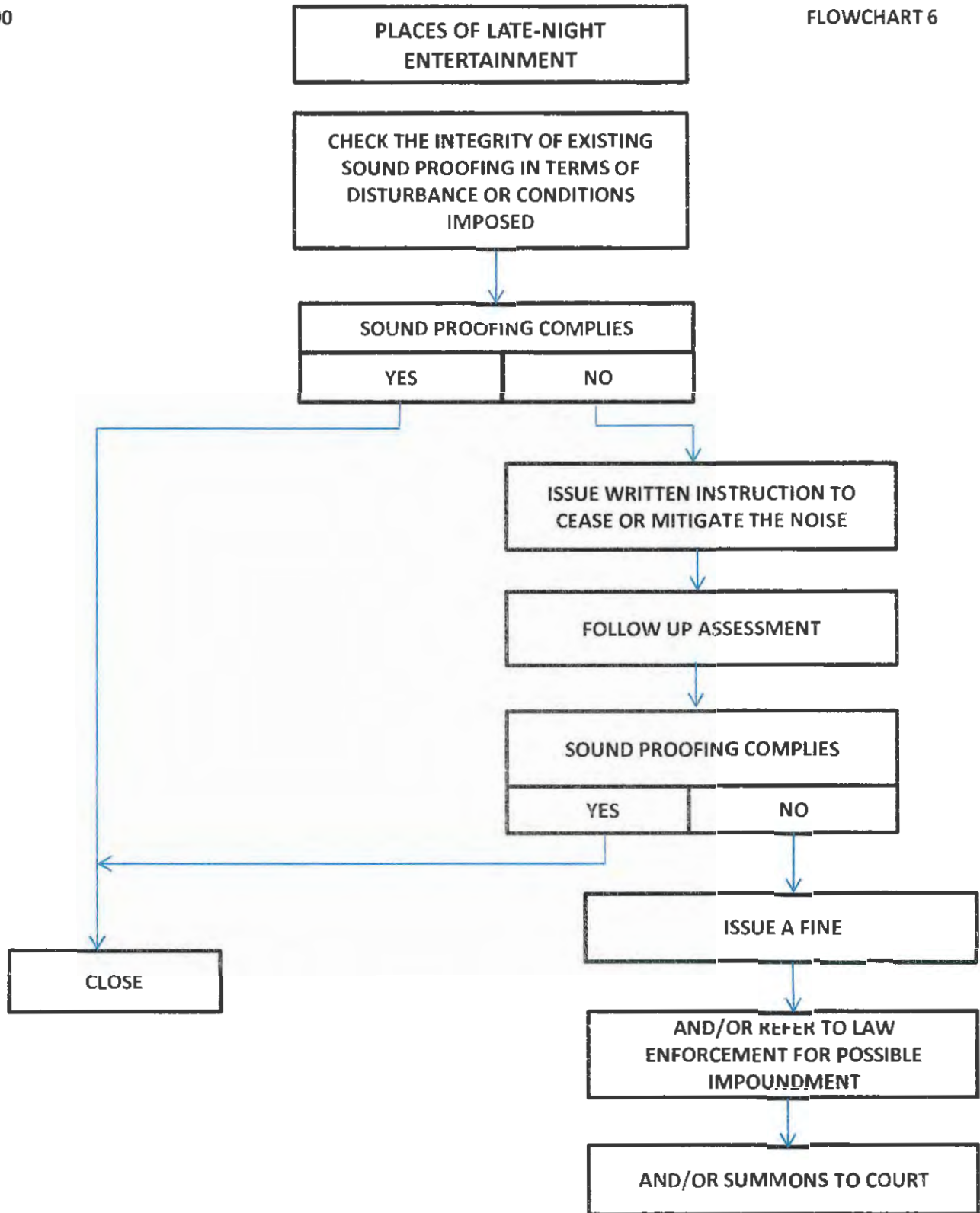
FLOWCHART 4





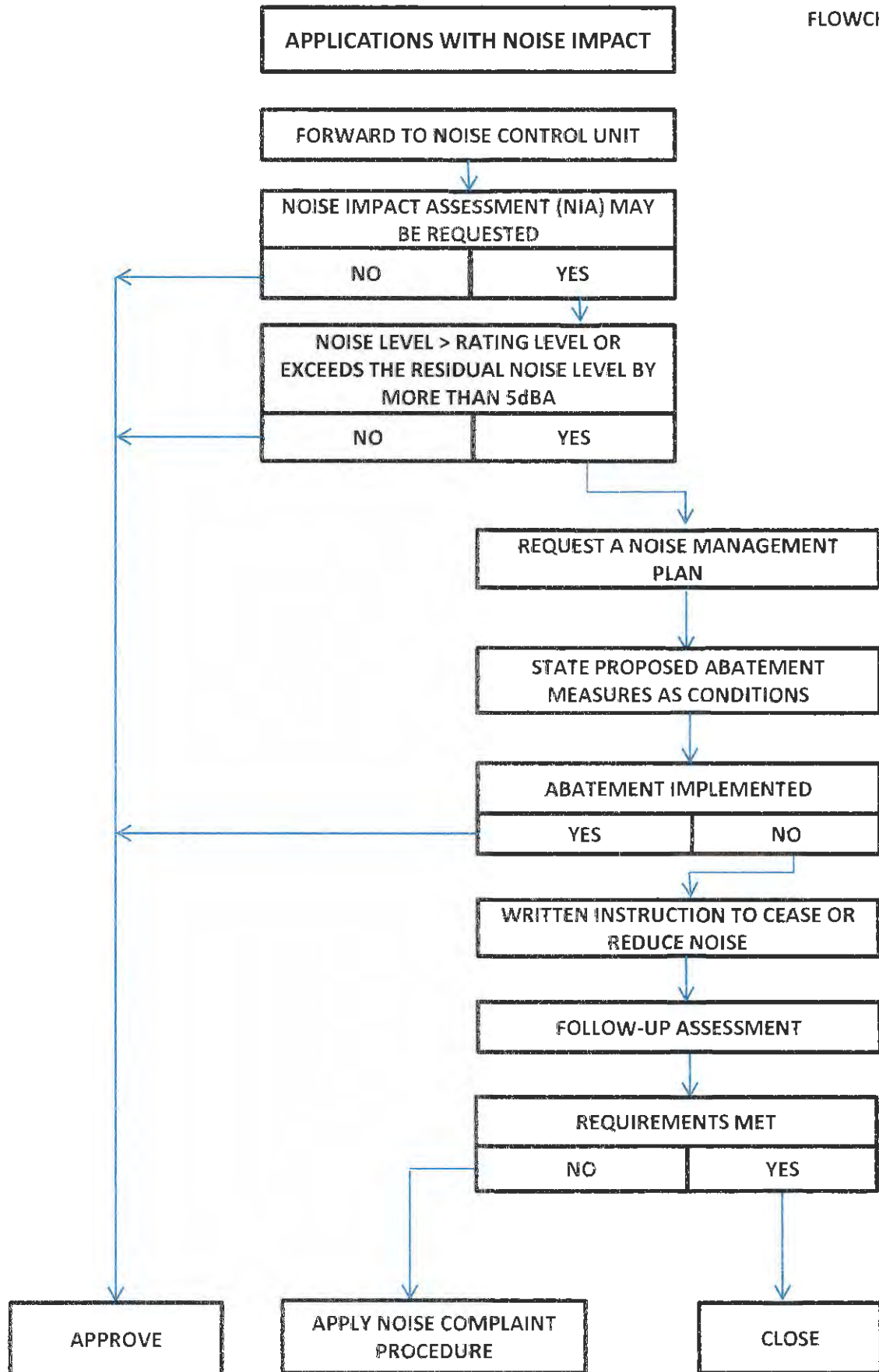
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FLOWCHART 6



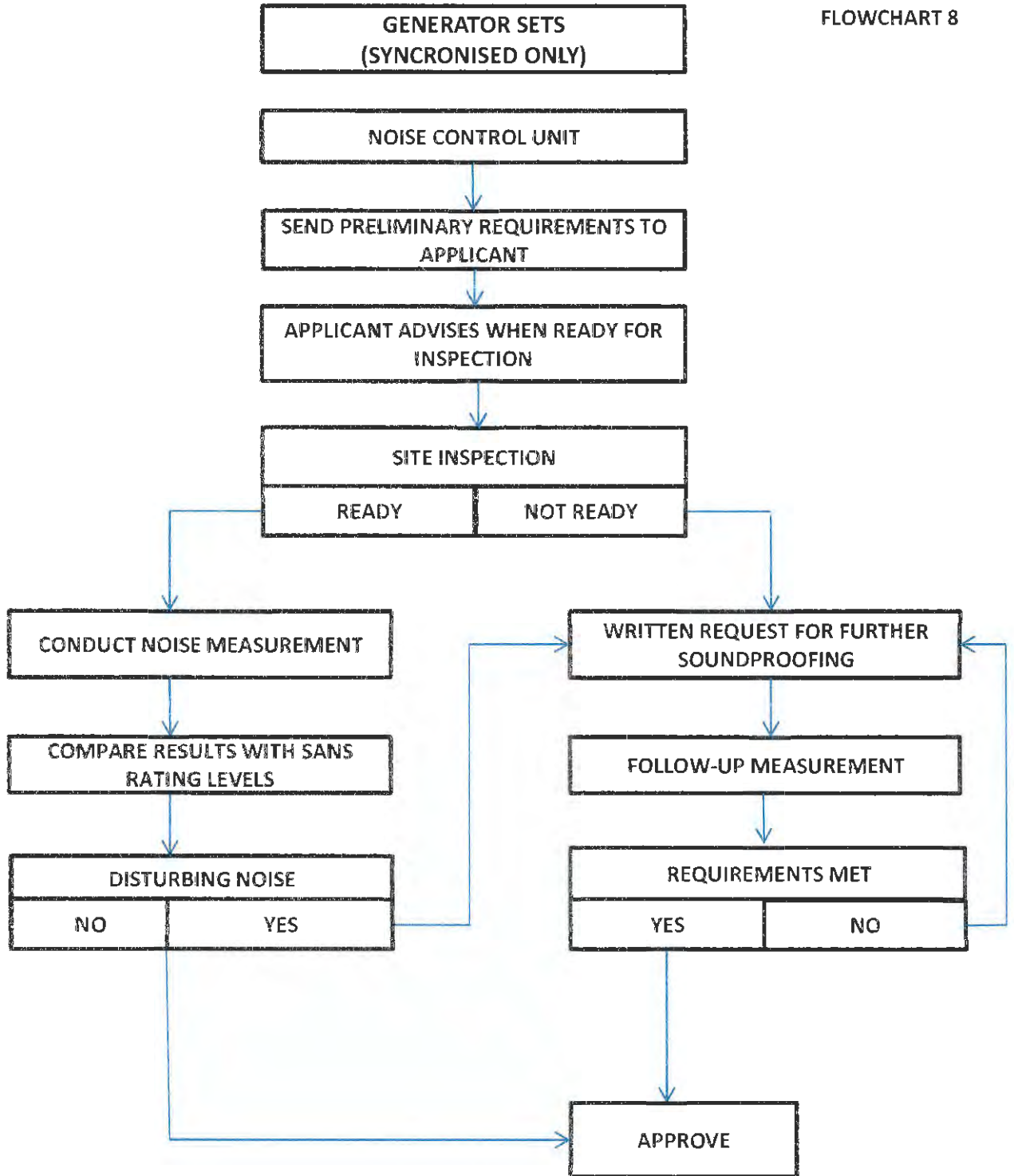
PN200

FLOWCHART 7



PN200

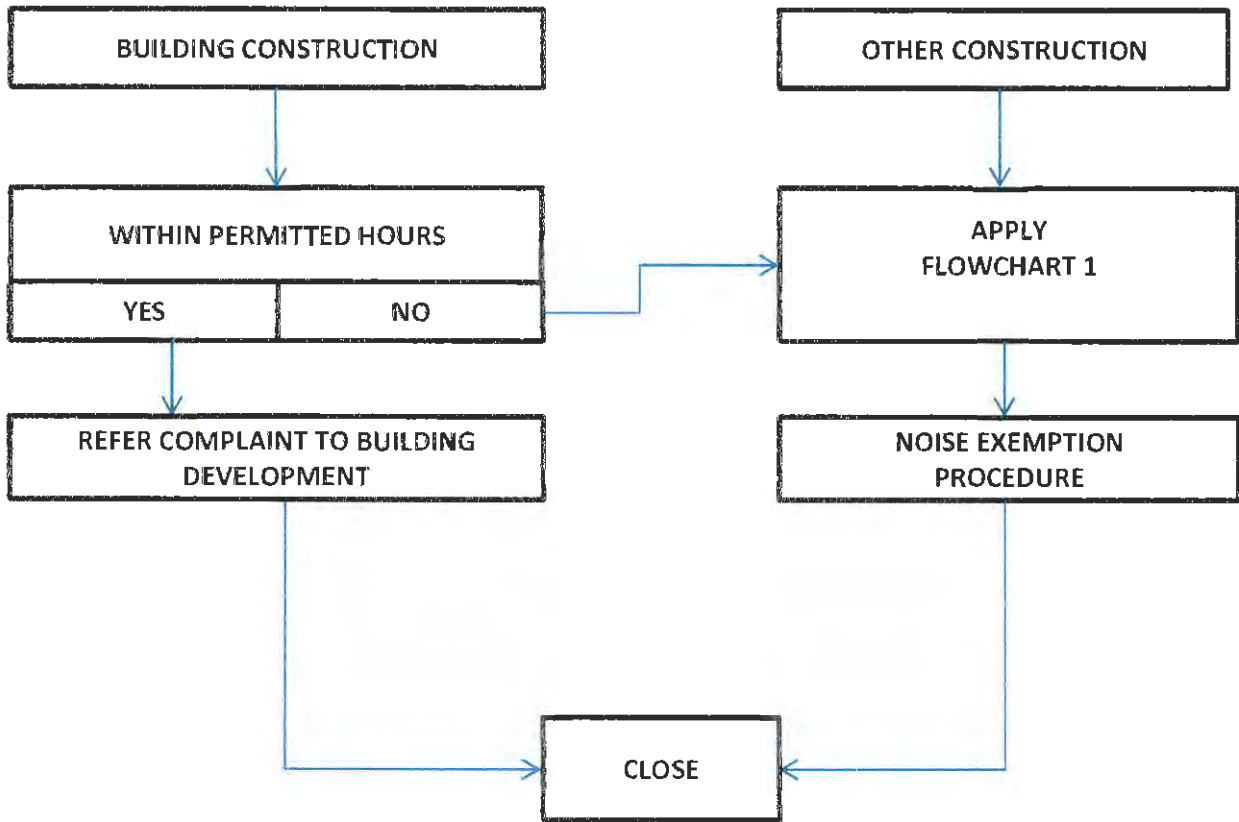
FLOWCHART 8



PN200

CONSTRUCTION NOISE

FLOWCHART 9



PN200

FLOWCHART 10

UNAMPLIFIED HUMAN VOICE

HUMAN VOICE ONLY  
YES NO

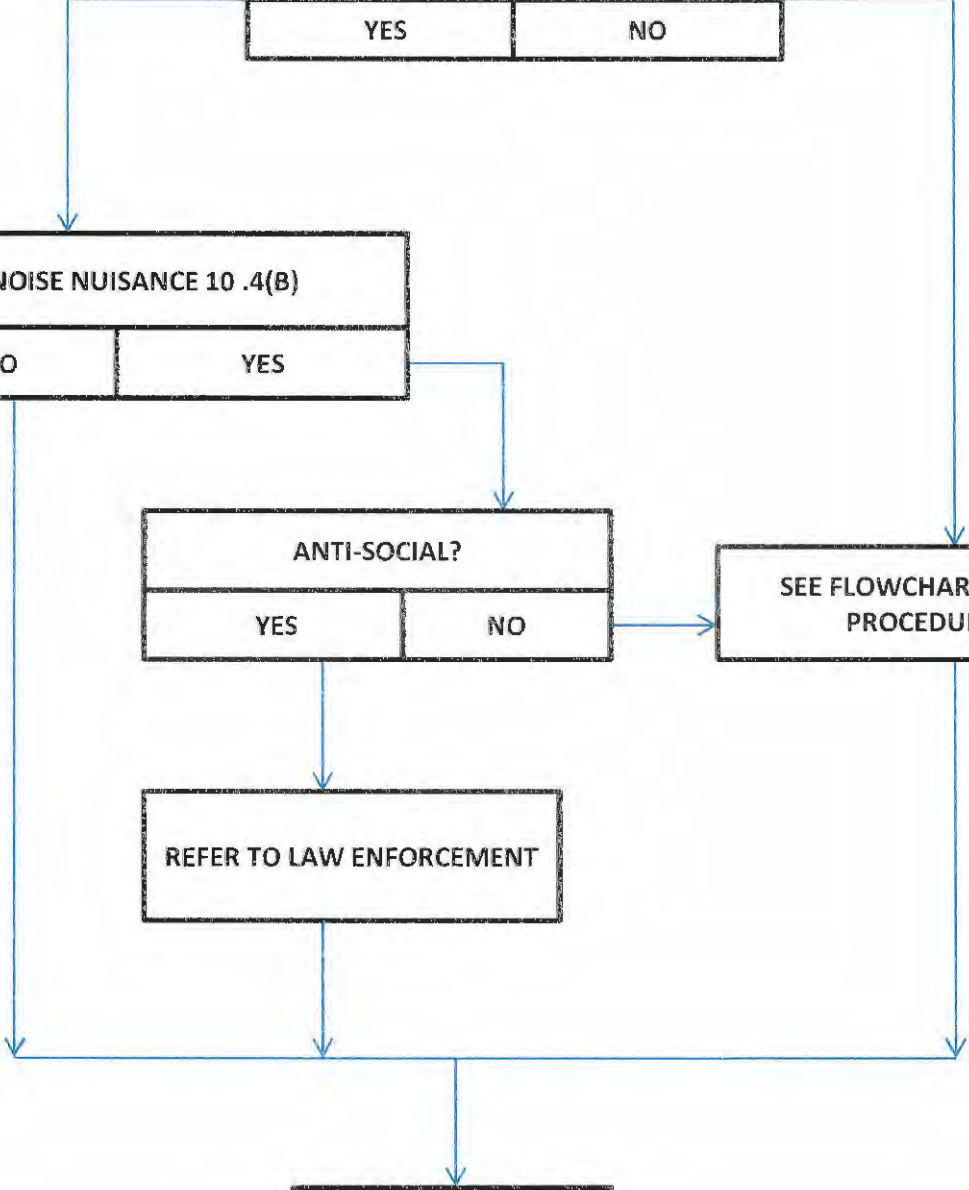
NOISE NUISANCE 10 .4(B)  
NO YES

ANTI-SOCIAL?  
YES NO

SEE FLOWCHART 1 FOR PROCEDURE

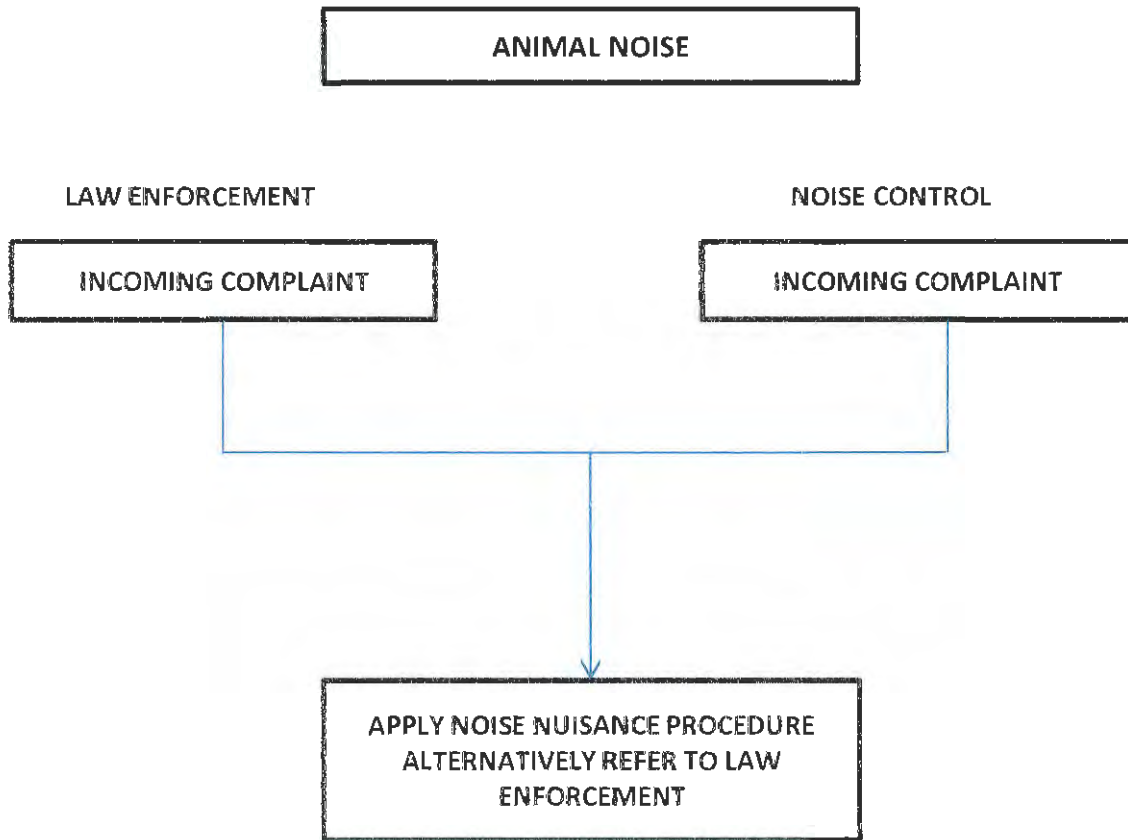
REFER TO LAW ENFORCEMENT

CLOSE



PN200

FLOWCHART 11







ANNEXURE 2

**Provincial Noise Control Regulations PN 200/2013**

PROVINCIAL NOTICE	PROVINSIALE KENNISGEWING	ISAZISO SEPHONDO
The following Provincial Notice is published for general information.	Die volgende Provinsiale Kennisgewings word vir algemene inligting gepubliseer.	Ezi zaziso zilandelayo zipapashelwe ukunika ulwazi ngokubanzi.
ADV. B. GERBER, DIRECTOR-GENERAL	ADV. B. GERBER, DIREKTEUR-GENERAAL	ADV. B. GERBER, UMLA WULI-JIKELELE
Provincial Legislature, Wale Street, Cape Town.	Provinsiale Wetgewer, Waalstraat, Kaapstad.	Indlu yoWiso-mthetho yePhondo, Wale Street, eKapa.

P.N. 200/2013

20 June 2013

## DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

## ENVIRONMENT CONSERVATION ACT, 1989

## WESTERN CAPE NOISE CONTROL REGULATIONS

The Provincial Minister of Local Government, Environmental Affairs and Development Planning in the province of the Western Cape has made the regulations in the Schedule under section 25 of the Environment Conservation Act, 1989 (Act 73 of 1989).

## SCHEDULE

## Definitions

1. In these regulations a word or expression to which a meaning has been assigned in the Environment Conservation Act, 1989 (Act 73 of 1989), or the relevant Standards South Africa publication (SANS) has the meaning so assigned and, unless the context indicates otherwise—

“ambient noise” means the all-encompassing sound in a given situation at a given time, measured as the reading on an integrated impulse sound level meter for a total period of at least 10 minutes;

“animal”, in relation to a person, means any animal in the possession or under the control of that person, and includes birds and poultry;

“authorised person” means—

- (a) a designated person;
- (b) a member of the Service as defined in section 1 of the South African Police Service Act, 1995 (Act 68 of 1995);
- (c) a municipal police officer, traffic official, law enforcement officer or traffic warden appointed under any law; or
- (d) a person who has been declared a peace officer under section 334(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977);

“dBA” means the sound pressure level measured in decibels which is A-weighted to approximate the response of the human ear;

“designated person” means a person designated or appointed by a local authority in terms of regulation 9;

“disturbing noise” means a noise, excluding the unamplified human voice, which—

- (a) exceeds the rating level by 7 dBA;
- (b) exceeds the residual noise level where the residual noise level is higher than the rating level;
- (c) exceeds the residual noise level by 3 dBA where the residual noise level is lower than the rating level; or
- (d) in the case of a low-frequency noise, exceeds the level specified in Annex B of SANS 10103;

“emergency” means a situation that arises suddenly and involves imminent or actual—

- (a) danger to persons; or
- (b) damage to property or the environment,

and which demands immediate action;

“local authority” means the municipality having jurisdiction;

“low-frequency noise” means sound which contains sound energy at frequencies predominantly below 100 Hz;

“model aircraft” includes an unmanned recreational aircraft, whether full size or scaled down;

“NEMA” means the National Environmental Management Act, 1998 (Act 107 of 1998);

“noise nuisance” means any sound which impairs or may impair the convenience or peace of a reasonable person;

“noise sensitive activity” means any activity that could be negatively impacted by noise, including residential, healthcare, educational or religious activities;

“person” includes a juristic person and an organ of state;

“**premises**” means a piece of land or any building or part of a building, place of residence, tent or other structure;

“**property projection plane**” means a vertical or horizontal plane, whichever is applicable, on a boundary line of premises defining a boundary of the premises in space;

“**Province**” means the Province of the Western Cape;

“**public event**” means any event—

- (a) to which the public or any section thereof has access, including a show, air show, music concert, festival, sports event or any similar event; and
- (b) at which any amplified music is played or reproduced;

“**rating level**” means the applicable outdoor equivalent continuous rating level indicated in Table 2 of SANS 10103;

“**residual noise**” means the all-encompassing sound in a given situation at a given time, measured as the reading on an integrated impulse sound level meter for a total period of at least 10 minutes, excluding noise alleged to be causing a noise nuisance or disturbing noise;

“**SANS 10103**” means the latest edition of Standards South Africa publication No. 10103 titled “The measurement and rating of environmental noise with respect to annoyance and to speech communication”, as amended from time to time, or its corresponding replacement;

“**SANS 10117**” means the latest edition of Standards South Africa publication No. 10117 titled “Calculation and prediction of aircraft noise around airports for land use purposes”, as amended from time to time, or its corresponding replacement, as referred to in SANS 10328;

“**SANS 10210**” means the latest edition of Standards South Africa publication No. 10210 titled “Calculating and predicting road traffic noise”, as amended from time to time, or its corresponding replacement, as referred to in SANS 10328;

“**SANS 10328**” means the latest edition of Standards South Africa publication No. 10328 titled “Methods for environmental noise impact assessments”, as amended from time to time, or its corresponding replacement;

“**SANS 658**” means the latest edition of Standards South Africa publication No. 658 titled “Integrating-averaging sound level meters”, as amended from time to time, or its corresponding replacement;

“**sound level**” means the equivalent continuous rating level as defined in SANS 10103, taking into account impulse, tone and night-time corrections;

“**vehicle**” means any device designed or adapted mainly to travel on wheels or crawler tracks, whether self-powered or not, other than such a device which travels solely on rails, including—

- (a) a motor vehicle;
- (b) a motorcycle;
- (c) an off-road vehicle, such as a scrambler, quadrucycle or dune buggy; and
- (d) a model vehicle;

“**vessel**” means any watercraft, including—

- (a) a jet ski;
- (b) a ski boat; and
- (c) a model vessel.

#### **Prohibition of disturbing noise**

2. A person may not—

- (a) cause a disturbing noise; or
- (b) allow a disturbing noise to be caused by any person, animal, machine, device, apparatus, vehicle, vessel or model aircraft, or any combination thereof.

#### **Prohibition of noise nuisance**

3. In so far as it causes or is likely to cause a noise nuisance, a person may not—

- (a) operate or play, or allow to be operated or played, a radio, television set, gramophone, recording device, drum, musical instrument, sound amplifier, or loudspeaker system, or any similar device producing, reproducing or amplifying sound;
- (b) market or advertise any article or service for sale;
- (c) allow an animal to make noise;
- (d) discharge fireworks in a manner that does not comply with the local authority's requirements;
- (e) build, make, construct, repair, rebuild, modify, operate or test a vehicle, vessel, aircraft, model aircraft or any other object, or allow it to be built, made, constructed, repaired, rebuilt, modified, operated or tested, in or near a residential area;
- (f) use or discharge any explosive, firearm or similar device that emits any sound impulse, or allow it to be used or discharged, without the written permission of the local authority;

- (g) except in an emergency, emit a sound, or cause a sound to be emitted, by means of a bell, carillon, siren, hooter, static alarm, whistle, loudspeaker or similar device;
- (h) operate any machinery, power tool, lawnmower, power garden tool or similar device or allow it to be operated;
- (i) load, unload, open, shut or in any other way handle a crate, box, container, building material, rubbish container or any other article, or allow it to be loaded, unloaded, opened, shut or handled;
- (j) drive or operate a vehicle, vessel or model aircraft or allow it to be driven or operated; or
- (k) make any other noise not indicated in paragraphs (a)-(j).

**Land use**

4. (1) The local authority, or any other authority responsible for considering an application for a building plan approval, business licence approval, planning approval or environmental authorisation, may instruct the applicant to conduct and submit, as part of the application—
  - (a) a noise impact assessment in accordance with SANS 10328 to establish whether the noise impact rating of the proposed land use or activity exceeds the appropriate rating level for a particular district as indicated in SANS 10103; or
  - (b) where the noise level measurements cannot be determined, an assessment, to the satisfaction of the local authority, of the noise level of the proposed land use or activity.
- (2) (a) A person may not construct, erect, upgrade, change the use of or expand any building that will house a noise-sensitive activity in a predominantly commercial or industrial area, unless he or she insulates the building sufficiently against external noise so that the sound levels inside the building will not exceed the appropriate maximum rating levels for indoor ambient noise specified in SANS 10103.
  - (b) The owner of a building referred to in paragraph (a) must inform prospective tenants or buyers in writing of the extent to which the insulation measures contemplated in that paragraph will mitigate noise impact during the normal use of the building.
  - (c) Paragraph (a) does not apply when the use of the building is not changed.
- (3) Where the results of an assessment undertaken in terms of subregulation (1) indicate that the applicable noise rating levels referred to in that subregulation will likely be exceeded, or will not be exceeded but will likely exceed the existing residual noise levels by 5 dBA or more—
  - (a) the applicant must provide a noise management plan, clearly specifying appropriate mitigation measures to the satisfaction of the local authority, before the application is decided; and
  - (b) implementation of those mitigation measures may be imposed as a condition of approval of the application.
- (4) Where an applicant has not implemented the noise management plan as contemplated in subregulation (3), the local authority may instruct the applicant in writing to—
  - (a) cease any activity that does not comply with that plan; or
  - (b) reduce the noise levels to an acceptable level to the satisfaction of the local authority.

**Noise from machinery in residential areas**

5. A person may not use a pool pump, irrigation pump, refrigeration unit, or any heating, ventilation or air-conditioning equipment, or any similar device, in a residential area if the noise on the property projection plane exceeds 50 dBA or exceeds the residual noise level by more than 5 dBA, except if authorised by the local authority or in an emergency.

**Places of late-night entertainment**

6. (1) A person may not conduct the business of a nightclub, or any similar late-night entertainment involving amplified sound, on or from any premises, unless the premises are soundproofed sufficiently so that a disturbing noise will not be caused outside the property projection plane of the premises.
  - (2) The local authority may require a person referred to in subregulation (1) to provide proof of the soundproofing, or may require access to the premises to assess the efficacy of the soundproofing.
  - (3) A person who conducts a business referred to in subregulation (1) on the date of publication of these regulations is exempted from the application of that subsection for a period of six months after that date.

**Events**

7. (1) A person may not stage a public event without a written exemption issued by the local authority in terms of regulation 12.
  - (2) Subject to subregulation (4) and the applicable provisions of any other law, the local authority may seize any instrument or equipment used to generate music or amplify sound at a public event if—
    - (a) an exemption in terms of regulation 12 has not been issued for that event; or
    - (b) the conditions imposed in such an exemption have not been met.
  - (3) An instrument or equipment seized under subregulation (2) must be kept in safe custody by the local authority which seized it.
  - (4) A local authority must return an instrument or equipment seized in terms of subregulation (2) upon recovery of reasonable expenses incurred by it for the purposes of subregulations (2) and (3).

- (5) If a local authority has reason to believe that a proposed event, other than a public event, could cause a disturbing noise or noise nuisance, it may instruct the person intending to host the event in writing to apply for an exemption in terms of regulation 12(1)(b).
- (6) A person may not stage an event in respect of which a local authority has given an instruction contemplated in subregulation (5) without a written exemption issued by the local authority in terms of regulation 12.

#### Measurement and calculation procedures

8. (1) A person using sound measuring equipment for the purposes of these regulations must ensure that—
- (a) the equipment complies with the requirements for type I instruments as indicated by SANS 658; and
- (b) the measurement and calculation procedures comply with SANS 10103, SANS 10328, SANS 10117 and SANS 10210, as the case may be.
- (2) The person taking a measurement may in his or her discretion determine the measuring or calculation point as—
- (a) a point where the complainant is most affected by the noise; or
- (b) a point on the property projection plane of the premises concerned that is representative of the noise matter concerned.

#### Designation of employees by local authorities to perform noise control functions

9. A local authority must within a year of the publication of these regulations—
- (a) designate an employee of the local authority with the necessary competencies who must be responsible for the administration of these regulations within the area of jurisdiction of the local authority;
- (b) designate an employee of the local authority with appropriate knowledge and skills for conducting noise control or acoustic measurement, and who is registered with a science, engineering or health-related professional body, who must be responsible for—
- (i) analysing, evaluating, approving and advising on noise impact assessments and noise management plans;
- (ii) approving sound mitigation measures;
- (iii) conducting noise impact measurements and calculating sound levels; and
- (iv) scrutinising sound modelling and techniques; and
- (c) if it cannot designate an employee as contemplated in paragraph (b)—
- (i) by agreement with another local authority, appoint an official of the other local authority to fulfil the duties of such an employee; or
- (ii) appoint a professional consultant who is qualified in noise control and competent to fulfil the duties of such an employee, when necessary.

#### Procedure for control of noise

10. (1) When a person lodges a complaint of a suspected disturbing noise to a local authority, a designated person must—
- (a) investigate the complaint and determine by calculation or measurement in accordance with SANS 10328 whether it is a disturbing noise;
- (b) apply the rating level except where the residual noise level differs by more than 10 dBA from the rating level; and
- (c) if a noise is a disturbing noise, issue written instructions to—
- (i) the person causing the noise or who is responsible for the noise; or
- (ii) the owner, tenant, occupant or person in charge of the premises concerned,
- to cease the disturbing noise or to mitigate it to a level conforming to the requirements of these regulations within the period specified in the instructions.
- (2) If a person is found to be responsible for or creating a disturbing noise, the local authority may hold that person liable for the cost of appointing a professional consultant as contemplated in regulation 9(c)(ii) to investigate the complaint.
- (3) A complaint to a local authority on an alleged noise nuisance must be in the form of an affidavit, specifying—
- (a) the nature of the alleged noise nuisance;
- (b) when the noise nuisance was first noticed;
- (c) the duration of the noise nuisance;
- (d) if applicable, how often the noise nuisance has occurred;
- (e) the origin of the noise nuisance; and
- (f) if obtainable, the name and address of the occupant of the premises from which the nuisance originates.

- (4) On receipt of a complaint of a noise nuisance, an authorised person—
- (a) must investigate the complaint; and
  - (b) if, in the opinion of the authorised person, a noise is or may be a noise nuisance, he or she may issue written instructions to—
    - (i) the person causing the noise or who is responsible for the noise; or
    - (ii) the owner, tenant, occupant or person in charge of the premises concerned,
 to cease or mitigate the noise nuisance within the period specified in the instruction.

#### General powers of local authorities and authorised persons

11. (1) A local authority may—
- (a) impose conditions when granting any permission or exemption in terms of these regulations; and
  - (b) subject to the applicable provisions of any other law, place sound-level measuring instruments or similar devices, and road traffic signs or notices related to noise, at any place within its area of jurisdiction.
- (2) An authorised person may, in respect of a complaint of a noise nuisance or a disturbing noise, enter any premises to conduct any appropriate examination, inquiry or inspection subject to subregulation (3).
- (3) An authorised person may not enter residential premises for the purposes of subregulation (2) except—
- (a) with the consent of the owner or person in charge of the premises; or
  - (b) on the authority of a warrant issued by a magistrate after the magistrate has been satisfied that reasonable grounds exist to justify the warrant.

#### Exemptions

12. (1) A local authority may exempt any person or venue or type of venue from any provision of these regulations—
- (a) on its own initiative; or
  - (b) on application by any person.
- (2) The applicant referred to in subregulation 1(b) must—
- (a) provide full reasons for the application; and
  - (b) in a manner determined by the local authority, solicit written comment regarding the application.
- (3) The process referred to in subregulation (2) must afford an opportunity to potential interested and affected parties to submit written representations on the proposed exemption, and the applicant may comment in writing on any representations received.
- (4) A local authority must in writing, after considering an application or a proposal for the granting of an exemption, where applicable in accordance with the principles of environmental management under NEMA—
- (a) grant an exemption and set out the conditions, if any, in terms of which the exemption is granted;
  - (b) refuse to grant an exemption and upon request provide reasons for the refusal; or
  - (c) require a noise impact assessment in terms of SANS 10328 before making a decision referred to in paragraph (a) or (b).
- (5) The conditions referred to in subregulation (4)(a) may include, where applicable—
- (a) the period for which the exemption is granted, including the times and days when acts that may cause noise are exempted;
  - (b) whether a notice as set out in Annexure 1 must be placed, in a clearly visible position at each public entrance to the premises;
  - (c) whether noise levels must be monitored and, if so, the manner in which it must be done and how records must be kept for inspection; and
  - (d) any other conditions of the exemption.
- (6) The local authority may amend an exemption or condition granted or imposed by it under subregulation 4(a)—
- (a) on its own initiative; or
  - (b) on application by the holder of the exemption.
- (7) An application in terms of subregulation (6)(b) must be in writing and accompanied by a motivation for the amendment.

- (8) Upon receipt of an application referred to in subregulation (6)(b), the local authority—
- (a) must consider whether approving the application is likely to adversely affect the rights or interests of other parties; and
  - (b) may for that purpose request the applicant to furnish additional information.
- (9) An exemption referred to in subregulation (4) may not exceed one year, unless it is in respect of an authorisation contemplated in regulation 4.
- (10) If any condition of an exemption is not complied with, the local authority may—
- (a) instruct the responsible person to comply with that condition; or
  - (b) suspend or withdraw the exemption forthwith.
- (11) A written exemption must be kept on the premises for which it is granted or in the possession of the exemption holder, for inspection by a local authority or an authorised person upon request.

#### Offences and penalties

13. (1) A person commits an offence if he or she—
- (a) contravenes or fails to comply with regulation 2, 3, 4(2), 5, 6(1), 7(1) or 7(6);
  - (b) fails or refuses to comply with a written condition, written instruction or written notice imposed, given or issued by a local authority or an authorised person in terms of these regulations;
  - (c) tampers with, removes, puts out of action, damages or impairs the functioning of any object used or placed in position by or on behalf of a local authority or an authorised person for the purposes of these regulations, including a noise monitoring system, noise limiter, sound-level measuring instrument or acoustic device, or a road traffic sign or notice related directly or indirectly to noise;
  - (d) fails or refuses to grant admission to an authorised person to enter and to inspect premises on the authority of a warrant issued in terms of regulation 11(3)(b);
  - (e) fails or refuses to give information to an authorised person, which may lawfully be required of him or her by that authorised person;
  - (f) hinders or obstructs an authorised person in the execution of his or her duties; or
  - (g) gives false or misleading information to an authorised person knowing that it is false or misleading.
- (2) A person convicted of an offence in terms of these regulations is liable to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.
- (3) A person convicted of an offence in terms of these regulations, and who after the conviction persists in the act or omission which constituted the offence, commits a continuing offence and is liable on conviction to a fine not exceeding R50 000 or imprisonment for a period not exceeding twenty days, or to both such fine and imprisonment for every day the offence continues.

#### Application of regulations

14. These regulations apply to all local authorities in the Province.

#### Repeal of regulations

15. The regulations published under Provincial Notice 627 of 1998 (in Provincial Gazette 5309 of 20 November 1998) are repealed.

#### Short title

16. These regulations are called the Western Cape Noise Control Regulations, 2013.

#### Annexure 1

The warning notice referred to in regulation 12(5)(b) must not be smaller than 30 cm by 20 cm, and the lettering not smaller than 12 mm in height. The notice must contain the following wording:

<p><b>WARNING</b></p> <p><b>HIGH NOISE LEVEL INSIDE</b></p> <p><b>EXTENDED EXPOSURE MAY DAMAGE YOUR HEARING</b></p>
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## DEPARTEMENT VAN OMGEWINGSAKE EN ONTWIKKELINGSBEPLANNING

## WET OP OMGEWINGSBEWARING, 1989

## WES-KAAPSE GERAASBEHEERREGULASIES

Die Provinsiale Minister van Plaaslike Regering, Omgewingsake en Ontwikkelingsbeplanning in die provinsie Wes-Kaap het die regulasies in die Bylae kragtens artikel 25 van die Wet op Omgewingsbewing, 1989 (Wet 73 van 1989), gemaak.

## BYLAE

## Woordomskrywing

1. In hierdie regulasies het 'n woord of uitdrukking waaraan 'n betekenis in die Wet op Omgewingsbewing, 1989 (Wet 73 van 1989), of die betrokke Suid-Afrikaanse Nasionale Standaard-publikasie (SANS) toegeskryf is, die betekenis aldus daaraan toegeskryf en, tensy dit uit die samehang anders blyk, beteken—
  - “aangewese persoon” 'n persoon wat ingevolge regulasie 9 deur 'n plaaslike owerheid aangewys of aangestel is;
  - “aanslagpeil” die toepaslike buitenshuise ekwivalente deurlopende aanslagpeil aangedui in Tabel 2 van SANS 10103;
  - “dBA” die klankdrukpeil gemeet in desibel en wat A-aangepas is om die reaksie van die menslike oor by benadering vas te stel;
  - “dier”, met betrekking tot 'n persoon, enige dier in die besit of onder die beheer van daardie persoon, en sluit voëls en pluimvee in;
  - “eiendomsprojeksievlak” 'n vertikale of horisontale vlak, watter een ook al van toepassing is, op 'n grenslyn van 'n perseel wat 'n grens van die perseel in ruimte omskryf;
  - “gemagtigde persoon”—
    - (a) 'n aangewese persoon;
    - (b) 'n lid van die Diens soos omskryf in artikel 1 van die Wet op die Suid-Afrikaanse Polisie, 1995 (Wet 68 van 1995);
    - (c) 'n munisipale polisiebeampte, verkeersbeampte, wetstoepassingsbeampte of verkeersopsigter aangestel kragtens enige wet; of
    - (d) 'n persoon wat tot vredesbeampte verklaar is kragtens artikel 334(1) van die Strafproseswet, 1977 (Wet 51 van 1977);
  - “geraasoorlas” enige geluid wat die gerief of rus van 'n redelike persoon versteur of kan versteur;
  - “geraassensitiewe aktiwiteit” enige aktiwiteit wat negatief geraak kan word deur geraas, met inbegrip van residensiële, gesondheidsorg-, opvoedkundige of godsdienstige aktiwiteite;
  - “klankpeil” die ekwivalente deurlopende aanslagpeil soos omskryf in SANS 10103, met inagneming van impuls, toon en regstellings snags;
  - “laefrekwensiegeraas” 'n geluid wat klankenergie bevat teen frekwensies wat grotendeels laer as 100 Hz is;
  - “model-lugvaartuig” ook 'n onbemande ontspanningslugvaartuig, hetsy volgrootte of na verhouding verklein;
  - “noodsituasie” 'n situasie wat skielik ontstaan en dreigende of werklike—
    - (a) gevaar vir mense; of
    - (b) skade aan eiendom of die omgewing, inhou en onmiddellike optrede vereis;
  - “omgewingsgeraas” die allesomvattende geluid in 'n gegewe situasie op 'n gegewe tyd, gemeet as die lesing op 'n geïntegreerde impulsklankpeilmeter vir 'n totale tydperk van minstens 10 minute;
  - “openbare gebeurtenis” enige gebeurtenis—
    - (a) waartoe die publiek of enige gedeelte daarvan toegang het, met inbegrip van 'n vertoning, lugvertoning, musiekkonsert, fees, sportgebeurtenis of enige dergelike gebeurtenis; en
    - (b) waar musiek oor 'n klankversterker gespeel of gereproduseer word;
  - “perseel” 'n stuk grond of enige gebou of gedeelte van 'n gebou, woonplek, tent of ander struktuur;
  - “persoon” ook 'n regspersoon en 'n staatsorgaan;
  - “plaaslike owerheid” die munisipaliteit wat jurisdiksie het;
  - “Provinsie” die provinsie Wes-Kaap;
  - “residuele geraas” die allesomvattende geluid in 'n gegewe situasie op 'n gegewe tyd, gemeet as die lesing op 'n geïntegreerde impulsklankpeilmeter vir 'n totale tydperk van minstens 10 minute, behalwe geraas wat beweer word 'n geraasoorlas of steurende geraas te veroorsaak;
  - “SANS 10103” die jongste uitgawe van Standaard Suid-Afrika-publikasie Nr. 10103 getitel “The measurement and rating of environmental noise with respect to annoyance and to speech communication” (“Die meting en aanslag van omgewingsgeraas met betrekking tot steurnis en spraakkommunikasie”), soos van tyd tot tyd gewysig, of die ooreenstemmende vervanging daarvan;
  - “SANS 10117” die jongste uitgawe van Standaard Suid-Afrika-publikasie Nr. 10117 getitel “Calculation and prediction of aircraft noise around airports for land use purposes” (“Berekening en voorspelling van lugverkeergeraas naby lughawens vir grondgebruiksdoeleindes”), soos van tyd tot tyd gewysig, of die ooreenstemmende vervanging daarvan; soos bedoel in SANS 10328;



“SANS 10210” jongste uitgawe van Standaard Suid-Afrika-publikasie Nr. 10210 getitel “Calculating and predicting road traffic noise” (“Berekening en voorspelling van padverkeergeraas”), soos van tyd tot tyd gewysig, of die ooreenstemmende vervanging daarvan, soos bedoel in SANS 10328;

“SANS 10328” die jongste uitgawe van Standaard Suid-Afrika-publikasie Nr. 10328 getitel “Methods for environmental noise impact assessments” (“Metodes waarvolgens die impak van omgewingsgeraas geassesseer word”), soos van tyd tot tyd gewysig, of die ooreenstemmende vervanging daarvan;

“SANS 658” die jongste uitgawe van Standaard Suid-Afrika-publikasie Nr. 658 getitel “Integrating-averaging sound level meters” (“Geïntegreerdegemiddelde-klankpeilmeters”), soos van tyd tot tyd gewysig, of die ooreenstemmende vervanging daarvan;

“steurende geraas” ’n geraas, behalwe die onversterkte menslike stem, wat—

- (a) die aanslagpeil met 7 dBA oorskry;
- (b) die residuele geraaspeil oorskry waar die residuele geraaspeil hoër as die aanslagpeil is;
- (c) die residuele geraaspeil met 3 dBA oorskry waar die residuele geraaspeil laer as die aanslagpeil is; of
- (d) in die geval van ’n laefrekwensiegeraas, die peil vermeld in Bylae B van SANS 10103 oorskry;

“vaartuig” enige watertuig, met inbegrip van—

- (a) ’n waterponie;
- (b) ’n skootboot; en
- (c) ’n modelvaartuig;

“voertuig” toestel wat ontwerp of aangepas is om hoofsaaklik op wiele of rusperbande te loop, hetsy selfgedrewe of nie, behalwe so ’n toestel wat uitsluitlik op ’n spoor loop, met inbegrip van—

- (a) ’n motorvoertuig;
- (b) ’n motorfiets;
- (c) ’n veldvoertuig, byvoorbeeld ’n veldmotorfiets, vierwielmotorfiets of duinebesie; en
- (d) ’n modelvoertuig;

“WNOB” die Wet op Nasionale Omgewingsbestuur, 1998 (Wet 107 van 1998).

#### Verbod op steurende geraas

2. ’n Persoon mag nie—

- (a) ’n steurende geraas veroorsaak nie; of
- (b) toelaat dat ’n steurende geraas deur enige persoon, dier, masjien, toestel, apparaat, voertuig, vaartuig of model-lugvaartuig, of enige kombinasie daarvan, veroorsaak word nie.

#### Verbod op geraasoorlas

3. Vir sover ’n geraasoorlas daardeur veroorsaak word of waarskynlik daardeur veroorsaak sal word, mag ’n persoon nie—

- (a) ’n radio, televisiestel, grammofoon, opnametoestel, trom, musiekinstrument, klankversterker, luidsprekerstelsel of enige dergelike toestel wat klank voortbring, reproduseer of versterk, gebruik, speel of bespeel, of toelaat dat dit gebruik, gespeel of bespeel word nie;
- (b) enige artikel of diens as te koop bemark of adverteer nie;
- (c) ’n dier toelaat om geraas te maak nie;
- (d) vuurwerke afvuur op ’n wyse wat nie voldoen aan die vereistes van die plaaslike owerheid nie;
- (e) ’n voertuig, vaartuig, vliegtuig, model-lugvaartuig of enige ander voorwerp bou, maak, inmeekaarsit, herstel, herbou, modifiseer, gebruik of toets, of toelaat dat dit gebou, gemaak, inmeekaarsit, herstel, herbou, gemodifiseer, gebruik of getoets word in of naby ’n woongebied nie;
- (f) plofstof, vuurwapen of dergelike toestel wat enige klankimpuls vrystel, gebruik of afvuur of toelaat dat dit gebruik of afgevuur word, sonder die skriftelike verloop van die plaaslike owerheid nie;
- (g) behalwe in ’n noodsituasie, ’n geluid voortbring of laat voortbring deur middel van ’n klok, klokkespel, sirene, toeter, statiese alarm, fluitjie, luidspreker of dergelike toestel nie;
- (h) enige masjinerie, kraggereedskap, grassnyer, krag- tuingereedskap of dergelike toestel gebruik of toelaat dat dit gebruik word nie;
- (i) ’n krat, kis, houër, boumateriaal, vullishouer of enige ander artikel oplaai, aflaai, oopmaak, toemaak of op enige ander manier hanteer, of toelaat dat dit opgelaai, afgelaai, oopgemaak, toegemaak of gehanteer word nie;
- (j) ’n voertuig, vaartuig of model-lugvaartuig bestuur of gebruik of toelaat dat dit bestuur of gebruik word nie; of
- (k) enige ander geraas maak wat nie in paragrafe (a)–(j) aangedui word nie.

**Grondgebruik**

4. (1) Die plaaslike owerheid, of enige ander owerheid verantwoordelik daarvoor om 'n aansoek om 'n bouplan-, sakelisenjie- of beplanningsgoedkeuring of omgewingsmagtiging te oorweeg, kan die aansoeker opdrag gee om die volgende uit te voer en voor te l as 'n deel van die aansoek:
- (a) 'n Geraasimpakassessering ooreenkomstig SANS 10328 om vas te stel of die geraasimpakaanslag van die voorgestelde grondgebruik of aktiwiteit die gepaste aanslagpeil vir 'n spesifieke distrik, soos in SANS 10103 aangedui, oorskry; of
- (b) waar die geraaspeilmettings nie vasgestel kan word nie, 'n assessering, tot bevrediging van die plaaslike owerheid, van die geraaspeil van die voorgestelde grondgebruik of aktiwiteit.
- (2) (a) 'n Persoon mag geen gebou wat 'n geraassensitiewe aktiwiteit sal huisves in 'n oorwegend handels- of nywerheidsgebied bou, oprig, opgradeer, die gebruik daarvan verander of uitbreidings daaraan aanbring nie, tensy hy of sy die gebou voldoende teen eksterne geraas insuleer sodat die klankpeil binne die gebou nie die toepaslike maksimum aanslagpeile vir binnenshuise omgewingsgeraas in SANS 10103 vermeld, sal oorskry nie.
- (b) Die eienaar van 'n gebou bedoel in paragraaf (a) moet voornemende huurders of kopers skriftelik inlig oor die mate waarin die insulasiemaatreëls bedoel in daardie paragraaf die geraas-impak gedurende die normale gebruik van die gebou sal demp.
- (c) Paragraaf (a) is nie van toepassing wanneer die gebruik van die gebou nie verander word nie.
- (3) Waar die resultate van 'n assessering wat ingevolge subregulasie (1) onderneem is, aandui dat die toepaslike geraasaanslagpeile bedoel in daardie subregulasie, waarskynlik oorskry sal word, of nie oorskry sal word nie maar waarskynlik die bestaande residuele geraaspeil met 5 dBA of meer sal oorskry—
- (a) moet die aansoeker 'n geraasbestuursplan verskaf, wat duidelik gepaste dempmaatreëls aandui, tot bevrediging van die plaaslike owerheid, waar daar oor die aansoek besluit word; en
- (b) kan die implementering van daardie dempmaatreëls opgelê word as 'n voorwaarde vir die goedkeuring van die aansoek.
- (4) Waar 'n aansoeker nie die geraasbestuursplan soos in subregulasie (3) beoog geïmplementeer het nie, kan die plaaslike owerheid die aansoeker skriftelik opdrag gee om—
- (a) enige aktiwiteit te staak wat nie aan daardie plan voldoen nie; of
- (b) die geraaspeile te verminder tot 'n aanvaarbare peil tot bevrediging van die plaaslike owerheid.

**Geraas van masjinerie in woongebiede**

5. 'n Persoon mag nie 'n swembadpomp, besproeiingspomp, verkoelingsseenheid, of enige verwarmings-, ventilasie- of lugversor-gingstoerusting, of enige dergelike toestel, in 'n woongebied gebruik indien die geraas op die eiendomsprojeksievlak 50 dBA oorskry of die residuele geraaspeil met meer as 5 dBA oorskry nie, behalwe indien dit deur die plaaslike owerheid gemagtig is, of tydens 'n noodsituasie.

**Plekke van laatnag-vermaaklikheid**

6. (1) 'n Persoon mag nie die onderneming van 'n nagklub bedryf, of enige dergelike laatnag-vermaaklikheid wat versterkte klank behels, in of vanaf enige perseel nie, tensy die perseel voldoende klankdig gemaak is sodat 'n steurende geraas nie buite die eiendomsprojeksievlak van die perseel veroorsaak word nie.
- (2) Die plaaslike owerheid kan vereis dat 'n persoon in subregulasie (1) bedoel bewys lewer van die klankdigting, of kan toegang tot die perseel vereis om die doeltreffendheid van die klankdigting te assesser.
- (3) 'n Persoon wat 'n onderneming bedoel in subregulasie (1) op die datum van die publikasie van hierdie regulasies bedryf, is vrygestel van die toepassing van daardie subartikel vir 'n tydperk van ses maande na daardie datum.

**Gebeurtenisse**

7. (1) 'n Persoon mag nie 'n openbare gebeurtenis aanbied sonder skriftelike vrystelling wat ingevolge regulasie 12 deur die plaaslike owerheid uitgereik is nie.
- (2) Behoudens subregulasie (4) en die toepaslike bepalings van enige ander wet, kan die plaaslike owerheid beslag lê op enige instrument of toerusting wat gebruik word om by 'n openbare gebeurtenis musiek te maak of klank te versterk indien—
- (a) 'n vrystelling ingevolge regulasie 12 nie vir daardie gebeurtenis uitgereik is nie; of
- (b) die voorwaardes van sodanige vrystelling nie nagekom is nie.
- (3) 'n Instrument of toerusting waarop ingevolge subregulasie (2) beslag gelê is, moet in veilige bewaring gehou word deur die plaaslike owerheid wat daarop beslag gelê het.
- (4) 'n Plaaslike owerheid moet 'n instrument of toerusting waarop ingevolge subregulasie (2) beslag gelê is, terugbesorg na die verhaling van redelike uitgawes wat deur hom aangegaan is vir die doeleindes van subregulasies (2) en (3).
- (5) Indien 'n plaaslike owerheid rede het om te vermoed dat 'n voorgestelde gebeurtenis, uitgesonderd 'n openbare gebeurtenis, 'n steurende geraas of geraasoorlas sou kan veroorsaak, kan hy die persoon wat beoog om die geleentheid aan te bied, skriftelik opdrag gee om aansoek te doen om 'n vrystelling ingevolge regulasie 12(1)(b).

- (6) 'n Persoon mag nie 'n gebeurtenis aanbied ten opsigte waarvan 'n plaaslike owerheid 'n opdrag in subregulasie (5) beoog, uitgereik het, sonder 'n skriftelike vrystelling wat ingevolge regulasie 12 deur die plaaslike owerheid uitgereik is nie.

#### Metings- en berekeningsprosedures

8. (1) 'n Persoon wat klankmetingstoerusting gebruik vir die doeleindes van hierdie regulasies moet toesien dat—
- die toerusting voldoen aan die vereistes vir tipe 1-instrumente soos deur SANS 658 aangedui; en
  - die metings- en berekeningsprosedures voldoen aan SANS 10103, SANS 10328, SANS 10117, en SANS 10210, na gelang van die geval.
- (2) Die persoon wat 'n meting neem kan na goëddunke die metings- of berekeningspunt bepaal as—
- 'n punt waar die klank die ergste deur die geraas geraak word; of
  - 'n punt op die eiendomsprojeksievlak wat verteenwoordigend van die betrokke geraas is.

#### Aanwysing van werknemers deur plaaslike owerhede om geraasbeheerfunksies te verrig

9. 'n Plaaslike owerheid moet binne 'n jaar van die publikasie van hierdie regulasies—
- 'n werknemer van die plaaslike owerheid aanwys wat oor die nodige bekwaamheid beskik, om verantwoordelik te wees vir die uitvoering van hierdie regulasies binne die regsgebied van die plaaslike owerheid;
  - 'n werknemer van die plaaslike owerheid aanwys wat oor gepaste kennis en vaardighede beskik om geraasbeheer of akoestieke meting uit te voer en wat by 'n wetenskaplike, ingenieurs- of gesondheidsverwante professionele liggaam geregistreer is, om verantwoordelik te wees vir—
    - die ontleding, evaluering en goedkeuring van, en raadgewing oor, geraasimpak-assesserings en geraasbestuursplanne;
    - die goedkeuring van klankdempingsmaatreëls;
    - die uitvoering van geraasimpakmetings en die berekening van klankpeile; en
    - die noukeurige ondersoek van klankmodellering en klanktegniek; en
  - indien hy nie 'n werknemer soos beoog in paragraaf (b) kan aanwys nie—
    - deur 'n ooreenkoms met 'n ander plaaslike owerheid 'n beampte van die ander plaaslike owerheid aanstel om die pligte van so 'n werknemer uit te voer; of
    - 'n professionele konsultant aanstel wat in geraasbeheer gekwalifiseer is en bekwaam is om, wantoeer nodig, die pligte van so 'n werknemer uit te voer.

#### Prosedure vir beheer van geraas

10. (1) Wanneer 'n persoon 'n klagte by 'n plaaslike owerheid indien oor wat vermoedelik 'n steurende geraas is, moet 'n aangewese persoon—
- die klagte ondersoek en deur berekening of meting ooreenkomstig SANS 10328 vasstel of dit 'n steurende geraas is;
  - aanslagpeil toepas, behalwe waar die residuële geraaspeil met meer as 10 dBA van die aanslagpeil verskil; en
  - indien 'n geraas 'n steurende geraas is, 'n skriftelike opdrag uitreik aan—
    - die persoon wat die geraas veroorsaak of daarvoor verantwoordelik is; of
    - die eienaar, huurder, bewoner of persoon in beheer van die betrokke perseel,
 om die geraas te staak of dit te demp tot 'n peil wat aan die vereistes van hierdie regulasies voldoen binne die tydperk in die opdrag vermeld.
- (2) Indien bevind word dat 'n persoon 'n steurende geraas veroorsaak of daarvoor verantwoordelik is, kan die plaaslike owerheid daardie persoon aanspreeklik hou vir die onkoste om 'n professionele konsultant aan te stel soos in regulasie 9(c)(ii) bedoel om die klag te ondersoek.
- (3) 'n Klagte by 'n plaaslike owerheid oor 'n beweerde geraasoorlas moet in die vorm van 'n beëdigde verklaring wees, wat die volgende vermeld:
- Die aard van die beweerde geraasoorlas;
  - wanneer die geraasoorlas die eerste opgemerk is;
  - die duur van die geraasoorlas;
  - indien van toepassing, hoe dikwels die geraasoorlas voorgekom het;
  - die oorsprong van die geraasoorlas; en
  - indien verkrygbaar, die naam en adres van die bewoner van die perseel waarvandaan die geraasoorlas ontstaan.

- (4) By ontvangs van 'n klagte oor 'n geraasoorlas moet 'n gemagtigde persoon—
- (a) die klagte ondersoek; en
- (b) indien, na die mening van die gemagtigde persoon, 'n geraas 'n geraasoorlas is of kan wees, kan hy of sy 'n skriftelike opdrag uitreik aan—
- (i) die persoon wat die geraas veroorsaak of daarvoor verantwoordelik is; of
- (ii) aan die eienaar, huurder, bewoner of persoon in beheer van die betrokke perseel, om die geraas te staak of te demp binne die tydperk in die opdrag vermeld.

#### Algemene bevoegdheids van plaaslike owerhede en gemagtigde persone

11. (1) 'n Plaaslike owerheid kan—
- (a) voorwaardes opleë wanneer enige toestemming of vrystelling ingevolge hierdie regulasies gegee word; en
- (b) behoudens die toepaslike bepalings van enige ander wet, klankpeil-meetinstrumente of soortgelyke toestelle, en padverkeerstekens of kennisgewings wat met geraas verband hou, op enige plek in sy regsgebied oprig.
- (2) 'n Gemagtigde persoon kan, ten opsigte van 'n klagte oor 'n geraasoorlas of 'n steurende geraas, enige perseel binnegaan om enige gepaste ondersoek, navraag of inspeksie uit te voer, behoudens subregulasie (3).
- (3) 'n Gemagtigde persoon mag nie 'n woonperseel binnegaan vir die doel van subregulasie (2) nie, behalwe—
- (a) met die toestemming van die eienaar of persoon in beheer van die perseel; of
- (b) op gesag van 'n lasbrief deur 'n landdros uitgereik nadat die magistratuur oortuig is dat daar redelike gronde bestaan wat die lasbrief regverdig.

#### Vrystellings

12. (1) 'n Plaaslike owerheid kan enige persoon of plek of soort plek van enige bepaling van hierdie regulasies vrystel—
- (a) uit eie beweging; of
- (b) op aanvraag van enige persoon.
- (2) Die aansoeker bedoel in subregulasie 1(b) moet—
- (a) volledige redes vir die aansoek verstrek; en
- (b) op 'n wyse bepaal deur die plaaslike owerheid, skriftelike kommentaar aangaande die aansoek aanvra.
- (3) Die proses in subregulasie (2) bedoel, moet 'n geleentheid bied aan moontlik belanghebbende en geraakte partye om skriftelike vertoë oor die voorgestelde vrystelling te rig, en die aansoeker kan skriftelik kommentaar lewer op enige vertoë wat ontvang is.
- (4) 'n Plaaslike owerheid moet, nadat 'n aansoek of voorstel vir die toekening van 'n vrystelling oorweeg is, waar van toepassing ooreenkomstig die beginsels van Omgewingsbestuur kragtens WNOB, skriftelik—
- (a) vrystelling verleen en die voorwaardes uiteensit, indien daar is, ingevolge waarvan die vrystelling verleen word;
- (b) weier om vrystelling te verleen en die redes vir die weiering verskaf; of
- (c) 'n geraasimpak-assessering ingevolge SANS 10328 vereis voordat 'n besluit in paragraaf (a) of (b) bedoel, geneem word.
- (5) Die voorwaardes bedoel in subregulasie 4(a) kan, waar van toepassing, die volgende insluit:
- (a) Die tydperk waarvoor die vrystelling verleen word, met inbegrip van die tye en dae wanneer handeling wat geraas kan veroorsaak, vrygestel word;
- (b) of 'n kennisgewing soos uiteengesit in Aanhangsel I aangebring moet word, op 'n duidelik sigbare plek by elke openbare toegang tot die perseel;
- (c) of geraaspeile gemonitor moet word en, indien wel, die manier waarop dit gedoen moet word en hoe rekords vir inspeksie gehou moet word; en
- (d) enige ander voorwaardes van die vrystelling.
- (6) Die plaaslike owerheid kan 'n vrystelling of voorwaarde wat hy kragtens subregulasie 4(a) verleen of opgelê het, wysig—
- (a) uit eie beweging; of
- (b) op aanvraag van die houër van die vrystelling.
- (7) 'n Aansoek ingevolge subregulasie (6)(b) moet op skrif wees en van 'n motivering vir die wysiging vergesel wees.

- (8) By ontvangs van 'n aansoek in subregulasie (6)(b) bedoel—
- (a) moet die plaaslike owerheid oorweeg of die goedkeuring van die aansoek die regte of belange van ander partye waarskynlik negatief sal raak; en
- (b) kan die plaaslike owerheid vir daardie doel bykomende inligting van die aansoeker aanvra.
- (9) 'n Vrystelling in subregulasie (4) bedoel, mag nie een jaar oorskry nie, tensy dit ten opsigte van 'n magtiging beoog in regulasie 4 is.
- (10) Indien daar aan enige voorwaarde van 'n vrystelling nie voldoen word nie, kan die plaaslike owerheid—
- (a) die verantwoordelike persoon opdrag gee om aan daardie voorwaarde te voldoen; of
- (b) die vrystelling summier opskort of terugtrek.
- (11) 'n Geskrewe vrystelling moet op die perseel waarvoor dit toegestaan is gehou word, of in die besit van die houer van die vrystelling wees, vir inspeksie deur 'n plaaslike owerheid of 'n gemagtigde persoon op versoek.

#### Misdrywe en strawwe

13. (1) 'n Persoon pleeg 'n misdryf indien hy of sy—
- (a) regulasie 2, 3, 4(2), 5, 6(1), 7(1) of 7(6) oortree of versuim om daaraan te voldoen;
- (b) versuim of weier om te voldoen aan 'n skriftelike voorwaarde, skriftelike opdrag of skriftelike kennisgewing ingevolge hierdie regulasies opgelê, gegee of uitgereik deur 'n plaaslike owerheid of 'n gemagtigde persoon;
- (c) peuter met enige voorwerp wat gebruik word of aangebring is deur of namens 'n plaaslike owerheid of 'n gemagtigde persoon vir die doeleindes van hierdie regulasies, met inbegrip van 'n geraasmoniteringstelsel, geraasdemper, klankpeil-meetinstrument of akoestiese toestel, of 'n padverkeersteken of kennisgewing wat direk of indirek met geraas verband hou, of indien hy of sy sodanige voorwerp buite werking stel of beskadig, of die werking daarvan belemmer;
- (d) versuim of weier om toegang te verleen aan 'n gemagtigde persoon om 'n perseel te betree en te inspekter op gesag van 'n lasbrief ingevolge regulasie 11(3)(b) uitgereik;
- (e) versuim of weier om inligting wat regtens van hom of haar vereis kan word deur 'n gemagtigde persoon, aan daardie gemagtigde persoon te verstrek;
- (f) 'n gemagtigde persoon by die uitvoering van sy of haar pligte verhinder of dwarsboom; of
- (g) foutiewe of misleidende inligting aan 'n gemagtigde persoon verstrek met die wete dat dit foutief of misleidend is.
- (2) 'n Persoon wat aan 'n misdryf ingevolge hierdie regulasies skuldig bevind word, is strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar, of met beide die boete en die gevangenisstraf.
- (3) 'n Persoon wat aan 'n misdryf ingevolge hierdie regulasies skuldig bevind word, en wat ná die skuldigbevinding voortgaan met die daad of versuim, pleeg 'n voortdurende misdryf en is by skuldigbevinding strafbaar met 'n boete van hoogstens R50 000 of gevangenisstraf van hoogstens twintig dae, of met beide die boete en gevangenisstraf vir elke dag wat die misdryf voortgesit word.

#### Toepassing van regulasies

14. Hierdie regulasies is op alle plaaslike owerhede in die Provinsie van toepassing.

#### Herroeping van regulasies

15. Die regulasies gepubliseer by Provinsiale Kennisgewing 627 van 1998 (in Provinsiale Koerant 5309 van 20 November 1998) word herroep.

#### Kort titel

16. Hierdie regulasies staan bekend as die Wes-Kaapse Geraasbeheerregulasies, 2013.

#### Aanhangsel 1

Die waarskuwingskennisgewing in regulasie 12(5)(b) bedoel, moet nie kleiner as 30 cm by 20 cm wees nie, en die letters nie kleiner as 12 mm in hoogte nie. Die kennisgewing moet die volgende bewoording bevat:

**WAARSKUWING**

**HOË GERAASVLAK HIERBINNE**

**LANGDURIGE BLOOTSTELLING KAN U GEHOOR BESKADIG**

## ISEBE LEMICIMBI YOKUSINGQONGILEYO NOCWANGCISO LOPHUHLISO

## "ENVIRONMENT CONSERVATION ACT, 1989"

## IMIGAQO EPHATHELELE KULAWULO LWENGXOLO

UMphathiswa wePhondo woRhulumente beMimandla, iMimicimbi yezokusiNgqongileyo noCwangciso loPhuhliso kwiphondo leNtshona Koloni wenze imigaqo elapha kwiShedyuli elandela imiqathango yecandelo 25 loMthetho woLondolozo lokusiNgqongileyo, 1989 (UMthetho 73 ka-1989).

## ISHEDYULI

## Iinkcazelo

1. Kule migaqo, naliphi na igama okanye intetho enikwe intsingiselo kulo Mthetho woLondolozo lokusiNgqongileyo, 1989 (UMthetho 73 ka-1989), okanye upapasho lweMigangatho yoMzantsi Afrika echaphazelekayo (SANS), liya kuba nentsingiselo eliyinikiweyo apha, ngaphandle kokuba imeko elisetyenziswe kuyo inenye intsingiselo—

"i-dBA" ithetha izinga loxinzelelo lwesandi elimetwa ngokweedesibheli elikumgangatho ka-A elihambelana nendlela indlebe yomntu eva ngayo;

"imeko kazakeka" ithetha imeko ethi gqi qhaphu ngokukhawuleza ebandakanya ingozi eza kubakho okanye ekhoyo kubantu okanye umonakalo kwipropati okanye kwindalo ethi ifunise ukuba kukhawulezwe kuthathwe amanyathelo;

"iNEMA" ibhekisa kuMthetho woLawulo lweNdalo, (*iNational Environment Management Act*), ka-1998 (UMthetho we-107 ka-1998);

"ingxolo ekuloo ndawo" ibhekisa kuso sonke isandi esivakalayo kwindawo nemeko ethile nangexesha elithile, ethi ichazwe ngokweemitha zezinga lengxolo ezibalwa ngezingqi sayo kangangexesha eliyimizuzu eli-10;

"ingxolo ephazamisayo" ithetha ingxolo, ngaphandle kwelizwi lomntu efigongezwanga ngesixhobo sesandi, ethi—

(a) ibe ngaphezulu kwezinga eliyi-7dBA;

(b) ibe ngaphezulu kwezinga lengxolo eshiyekeleyo elithi libe ngaphezulu kwezinga lokubala elisetyenziswayo;

(c) ibe ngaphezulu kwezinga lengxolo eshiyekeleyo kangange-3dBA apho ingxolo eshiyekeleyo ingaphantsi kwezinga lokubala elisetyenziswayo; okanye

(d) kwimeko yengxolo esezantsi, eba ngaphezulu kwezinga elichazwe kwiSihlomo B se-SANS 10103;

"ingxolo ekwizinga eliphantsi" ithetha isandi esinamandla esandi akwizinga elingaphantsi kwe-100Hz;

"ingxolo eyinkathazo" ibhekisa kuso nasiphi na isandi esiphazamisa okanye esinokuphazamisa ukuphola okanye uxolo lwaye nawuphi na umntu;

"inqwelomoya eyimodeli" ibandakanya nayiphi na inqwelomoya yokuzonwabisa engagadwanga, nokuba yenkulu okanye encinane;

"Iphondo" libhekisa kwiPhondo leNtshona Koloni;

"ingxolo eshiyekeleyo" ibhekisa kuso sonke isandi esivakalayo kwindawo nemeko ethile nangexesha elithile, ethi ichazwe ngokweemitha zezinga lengxolo ezibalwa ngezingqi sayo kangangexesha ubuncinane eliyimizuzu eli-10, ngaphandle kwengxolo ethathwa njengengxolo ecaphukisayo okanye ephazamisayo;

"isakhiwo" sibhekisa kumhlatyanyana okanye isakhiwo okanye inxalenye yesakhiwo, yendawo, yendlu, yentente okanye esinye isakhelo;

"i-SANS 10103" ibhekisa kushicilelo lokugqibela lwe-*Standards South Africa*, olunguNombolo 10103, olusihloko salo sithi: "Ukumetwa nokumiselwa kwamaqondo engxolo esingqongileyo okuphathelile ekusetyenzisweni komhlaba, kwimpilo, kwizinto ezithukuthezelayo nakuqhagamshelwano ngentetho", njengoko lumana lulungiswa ngamaxesha athile okanye kolunye ushicilelo oluthatha indawo yalo;

"i-SANS 10117" ibhekisa kushicilelo lokugqibela lwe-*Standards South Africa*, olunguNombolo 10117, olusihloko salo sithi: "Ukubalwa nokuqikelelwa kwengxolo yeenqwelo-moya kwizikhululo zeenqwelo-moya kulungiselelwa ukusetyenziswa komhlaba" njengoko lumana lulungiswa ngamaxesha athile okanye kolunye ushicilelo oluthatha indawo yalo; njengoko kuchaziwe kwi-SANS 10328;

"i-SANS 10210" ibhekisa kushicilelo lokugqibela lwe-*Standards South Africa*, olunguNombolo 10210, olunesihloko esithi: "Ukubalwa nokuqikelelwa kwengxolo yezithuthi zendlela", njengoko lumana lulungiswa ngamaxesha athile okanye kolunye ushicilelo oluthatha indawo yalo; njengoko kuchaziwe kwi-SANS 10328;

"i-SANS 10328" ibhekisa kushicilelo lokugqibela lwe-*Standards South Africa*, olunguNombolo 10328, olunesihloko esithi: "Iindlela zokuhlolwa kwendlela echaphazeleka ngayo indalo yingxolo", njengoko lumana lulungiswa ngamaxesha athile okanye kolunye ushicilelo oluthatha indawo yalo;

"i-SANS 658" ithetha uhlelo lokugqibela lopapasho lwe-*Standards South Africa*, olunguNomb. 658 olunesihloko esithi, "*Integrating-averaging sound level meters*";

"isiganeko sikawonkewonke" sithetha nasiphi na isiganeko—

(a) uluntu olunokusizimasa, esibandakanya umbhuyo, umboniso wasemoyeni, ikonsathi yomculo, ifestivali, isiganeko sezemidlalo okanye nasiphi na isiganeko esibunjalo; kananjalo

(b) apho kudlalwa umculo ongxolayo okanye odlalelwa phezulu.

"isilwanyana", xa sihlanganiswa nomntu, sithetha nasiphi na isilwanyana esisesaloo mntu yaye sibandakanya iintaka neenkukhu;

"isithuthi" sithetha nayiphi na into chamba ngamavili okanye erhubuluzwa emzileni, nokuba izihambela ngamandla ayo okanye ayizihambeli, ngaphandle kwezo zihamba kwimizila yoololiwe; kubandakanya—

- (a) imoto;
- (b) isithuthuthu;
- (c) isithuthu esingahambi ndleleni, isithuthuthu esiyikhwadi okanye esihamba esantini; kunye
- (d) nesithuthu esiyimodeli;

“**isityaba somda wepropati**” sithetha isityaba esimiyi okanye esileleyo, nokuba sesiphi na ekubhekiswa kuso, kumda wesakhiwo esibonisa apho uphela khona umda wesakhiwo kuloo ndawo sikuyo;

“**inqanawe**” nayiphi na into ehamba emanzini, ebandakanya—

- (a) i-jet ski;
- (b) isikibhowuthi; kunye
- (c) nenqanawe eyimodeli;

“**izinga lesandi**” lithetha izinga eliqhubekayo lokumeta isandi njengoko lichaziwe kwiSANS 10103, kuthathelwa ingqalelo isingqi, ithowuni nolungelelwano lwexesha lasebusuku;

“**izinga lokubala**” libhekisa kwizinga lokubala elisetyenziswa ngaphandle kuloo meko yeloo xesha kulawo achazwe kwiTheyibhile 2 yeSANS 10103;

“**ugunyaziwe wommandla**” ubhekisa kumasipala onegunya kwingingqi;

“**umntu**” uthetha umntu onamalungelo omthetho kunye nequmrhu likarhulumente;

“**umntu ogunyazisiweyo**” uthetha—

- (a) umntu okhethiweyo;
- (b) ilungu leeNkonzo yesipolisa elichazwe kwicandelo l lomthetho *iSouth African Police Service Act, 1995* (UMthetho 68 ka-1995);
- (c) ipolisa likamasipala, igosa lezendlela, ipolisa logcino-cwangco okanye iwadani yezendlela eqeshwe phantsi kwawo nawuphi na umthetho; okanye
- (d) umntu omiselwe njengcisa logcino-xolo ngokwemiqathango yecandelo 334(1) lomthetho *iCriminal Procedure Act, 1977* (UMthetho 51 ka-1977);

“**umntu okhethiweyo**” uthetha umntu otyunjwe ngugunyaziwe wommandla elandela imiqathango yomgaqo 9;

“**umsebenzi ongadibaniyo nengxolo**” ubhekisa kumsebenzi onokuchaphazeleka kakubi yingxolo; loo misebenzi ibandakanya imisebenzi esezindlini, kumacandelo ezempilo, kwawezemfundo, okanye iinkonzo.

#### UThintelo lweNngxolo ePhazamisayo

##### 2. Akukho mntu uya kwenza—

- (a) ingxolo ephazamisayo; okanye
- (b) avumele ukuba mayenziwe nguye nawuphi na umntu, sisilwanyana, ngumatshini, sisithuthu, sisithuthu sokuzonwabisa, sisixhobo okanye zizo naziphi na izinto ezidityanisiweyo kwezi zichaziweyo.

#### UThintelo lweNngxolo eyiNkathazo

##### 3. Apho oku kuza kudala ingxolo eyinkathazo, akukho mntu uya kuthi—

- (a) asebenzise okanye adlale, okanye avumele ukuba kusetyenziswe okanye kudlalwe ireyidiyo, umabonakude, igubu, isixhobo somculo, isixhobo sokwandisa isandi, isistimu yesandisi-zwi okanye esinye isixhobo esifanayo esikhupha, isandisi-zwi okanye esinye isixhobo esifanayo esikhupha isandi;
- (b) amakethe okanye athengise nayiphi into ethengiswayo;
- (c) avumele isilwanyana ukuba senze ingxolo;
- (d) adlale ngezitaka-ntlantsi ngendlela engahambelaniyo nemiqathango kamasipala wengingqi yakhe;
- (e) okhe, enze, adibanise, alungise, okhe ngokutsha, asebenzise okanye avavanye isithuthu, isikhophe okanye into ethile, okanye avumele ukuba kwakhiwe, kwenziwe, kudityaniswe, kulungiswe, kwakhiwe ngokutsha, kusetyenziswe okanye kuvavanywe ezi zinto, kwindawo enezindlu ekuhlalwayo kuzo okanye kufutshane nazo;
- (f) asebenzise okanye adubule nayiphi na into edubulayo, umpu okanye isixhobo esifana nawo esikhupha isandi esidubulayo, okanye avumele ukuba sisetyenziswe okanye sidutyuliswe, ngaphandle kokuba ufumene imvume ebalwe phantsi kumasipala onegunya lokulawula kuloo mmandla;
- (g) ngaphandle kwaxa kukho imeko engxamisekileyo, avakalise isandi, okanye abangele ukuba kwenziwe isandi ngentsimbi, ngentsimbi ebethwa ngomatshini, ngesayireni, ngehutara, ngesilumkisi esinesandi, ngempempe, ngesandisi-zwi, okanye ezinye isixhobo esifanayo nezi;
- (h) asebenzise nasiphi na isixhobo sogesi, umatshini wokucheba ingca, isixhobo sasagadini esisebenzisa umbane, okanye esinye isixhobo esifanayo okanye nasiphi na kwezi zixhobo;

- (i) afake izinto, akhuphe izinto, avule okanye avale okanye nangayiphi na enye indlela aphahe ihkreyithi, ibhokisi, into yokufaka izinto, izinto zokwakha, umgqomo wokufaka inkunkuma okanye enye into. okanye avumele ukuba le nto kufakwe kuyo izinto, kukhutshwe kuyo izinto, ivulwe okanye ivalwe okanye iphathwe;
- (j) aqhube isithuthi endleleni kawonke-wonke, inqanawe okanye inqwelomoya eyimodeli okanye avunyelwe ukuba sisetyenziswe; okanye
- (k) enze nayiphi na enye ingxolo engachazwanga kwimihlathi (a)-(j).

**UkuSetyenziswa koMhlaba**

4. (1) Ugunyaziwe wommandla, okanye nawuphi na ugunyaziwe, onoxanduva lokuqwalasela izicelo zeeplani zezakhiwo, ulwamkelo lweelayisenisi zamashishini, ulwamkelo lweeplani okanye ugunyaziso kwimiba yokusingqongileyo angayalela umfaki-sicelo ukuba enze ze angenise, njengenxalenye yesicelo sakhe—
- (a) Uvavanyo lwefuthe lengxolo ngokwemiqathango yeSANS 10328 ukuze afumanise ukuba ngaba ifuthe lengxolo kusetyenziso lwaloo mhlaba okanye kwinto eyenziwayo kuloo ndawo ingaba lingaphezulu na kwizinga ekungafanelanga kudlulwa kulo kweso sithili eliyiSANS 10103; okanye
  - (b) Apho lingaziwayo izinga lengxolo, kufuneka kungeniswe iziphumo zovavanyo eziya kuthi zanelise umasipala waloo ngingqi zezinga lengxolo eza kuba khona kusetyenziso lwaloo mhlaba okanye kwinto eza kwenziwa apho.
- (2) (a) Okhe okanye amise nasiphi na isakhiwo okanye enze iinguqu kwisakhiwo esikhoyo esikwindawo yokuhlala, apho kuza kwenziwa ushishino okanye kwindawo enemizi-mveliso ngaphandle kokuba kuyangqinwa ukuba emva kokuba esi sskhiwo sakhiwe, samiswa okanye saguqulwa, siza kwenziwa ngendlela efanelekileyo eza kusikhusela ngokwaneleyo ukuba ingxolo yangaphandle ingavakali kuso, ukuze amaqondo engxolo angaphakathi angabikho ngaphezulu kwalawo afanelekileyo nangawona aphezulu engxolo efanelekileyo yangaphakathi, achazwe kwi-SANS 10103.
- (b) Umnini-sakhiwo ekubhekiswe kuye kumhlathi (a) kufuneka abachazele abantu abaza kusebenzisa eso sakhiwo okanye abaza kusithenga ngokuthi ababhalele, ngamanyathelo okunqanda ingxolo aza kuwathatha ngexesha lesiqhelo lokusetyenziswa kweso sakhiwo.
- (c) Umhlathi (a) awusebenzi apho ukusetyenziswa kwesakhiwo kungatshintshwanga.
- (3) Apho iziphumo zovavanyo oluthathweyo ngokomqathangwana (1) zibonisa ukuba amazinga engxolo ekubhekiswe kuwo kulo mqathangwana kuza kudlulwa ngapha kwawo okanye akuzi kudlulwa kuwo kodwa kuza kudlulwa kwizinga elingu-5dBA okanye ngaphezulu—
- (a) umfaki-sicelo makangenise isicwangciso sokulawula ingxolo apho achaza ngokuphandle amanyathelo okunqanda ingxolo aya kuthi anelise umasipala waloo ngingqi phambi kokuba kuthathwe isigqibo; kananjalo
  - (b) ukumiselwa kwaloo manyathelo okunqanda ingxolo angasetyenziswa njengomqathango wokwamkelwa kweso sicelo.
- (4) Apho umfaki-sicelo engamiselanga isicwangciso sokulawula ingxolo njengoko kuchaziwe kumqathangwana (3), umasipala waloo ngingqi angayalela umfaki-sicelo ukuba—
- (a) ayeke kwamsebenzi ongathobeli eso sicwangciso; okanye
  - (b) athobe izinga lengxolo ukuba libe kwiqondo elamkelekileyo elanelisa umasipala waloo ngingqi.

**Ingxolo esuka koomatshini abakwiilokishi ezibhala uluntu**

5. Umntu akanakusebenzisa impompo yepuli, impompo yokunkcenkceshela, ifriji, okanye nasiphi na isishushubezi, isixhobo sokungenisa nokukhupha umoya okanye nantoni ebunjalo kwindawo enezindlu zabantu ukuba ngaba ingxolo ekuloo propati ingaphezulu kwe-50dBA okanye ingaphezulu kwezinga lengxolo eshiyakelelayo engu-5dBA, ngaphandle kokuba ufumene imvume kumasipala, okanye oko kwenzeka kwimeko kaxakeka.

**Iindawo zokonwaba ebusuku**

6. (1) Akukho mntu unokwenza umsebenzi weklabhu yasebusuku, okanye nawuphi na umsitho wasebusuku onengxolo egqumzayo ephezulu kuso nasiphi na isakhiwo ngaphandle kokuba akuphumeli ngxolo kweso sakhiwo ukwenzela ukuba kungabikho ngxolo ikhathazayo iya kuphumela ngaphandle kwemida yeso sakhiwo.
- (2) Umasipala angafuna ukuba umntu ekubhekiswe kuye kumqathangwana (1) ukuba eze nobungqina bokuba ingxolo ayiphumeli kwisakhiwo eso, okanye angacela ukuba avunyelwe ukuba angene kweso sakhiwo aze kuziqinisekisele ukuba ingxolo ayiphumeli.
- (3) Umntu owenza ushishino okanye umsebenzi ekuthethwa ngawo kumqathangwana (1) ngomhla wokupapashwa kwale miqathango, uyaxoleleka kuwo ukuba angangawuthobeli isithuba seenyanga ezintandathu emva kwaloo mhla.

**Imisitho okanye iziganeko**

7. (1) Akukho mntu unokwenza umsitho wasesidlangalaleni engafumenanga mvume ebhaliweyo esuka kumasipala waloo ngingqi ngokwemiqathango yomgaqo 12.
- (2) Kulandelwa umgaqwana (4) nayo yonke imiqathango echaphazelekayo yawo nawuphi na omnye umthetho, umasipala wengingqi angathatha nasiphi na izixhobo ebekusenziwa ngazo umculo okanye ebezinyusa ingxolo kumsitho kawonke-wonke ukuba—
- (a) abasindleki baloo msitho khange bafumane nto ibavumela ukuba bangangawuthobeli umgaqwana (1) kuloo msitho; okanye
  - (b) imiqathango ebekiwe xa henikwa isaphulelo kulo mgaqwana ayithotyelwanga.



- (3) Isixhobo esiye sathathwa phantsi komgaqwana (2) kufuneka sigcinwe sikhuselekile ngufoo masipala usithathileyo.
- (4) Umasipala wengingqi kufuneka abuyise isixhobo ebesibambile ngokomgaqwana (2) emva kokuba efumene iindleko azichithileyo elandela imigaqwana (2) no-(3).
- (5) Ukuba umasipala wengingqi unesizathu sokukholelwa ukuba umsitho ocetywayo, ngaphandle kokawonke-wonke, unokwenza ingxolo ephazamisayo okanye eaphukisayo, angayalcla umntu loo ufuna ukusindleka umsitho lowo ukuba abhale acele ukuba noko ophulelwe kwimiqathango yomgaqo 12(1)(b).
- (6) Akukho mntu uya kwenza umsitho apho umasipala anike umyalelo ochazwe kumgaqwana (5) ngaphandle kwemvume ebhaliweyo emvumelayo ukuba angathobeli imigaqo ethobeli, mvume leyo evela kumasipala ngokomgaqo 12.

**Inkqubo zokumeta nezokubala**

8. (1) Umntu osebenzisa isixhobo esinesandi, ngokwale migaqo kufuneka aqinisekise ukuba—
  - (a) Isixhobo eso sithobela imiqathango yezixhobo ezikuluhlul 1 njengoko kuchaziwe kwi-SANS 658; kananjalo
  - (b) Inkqubo zokumeta nokubala kufuneka zithobele iSANS 10103, SANS 10328, SANS 10117 neSANS 10210, kuxhomekeka ekubeni yeyiphi na echaphazelekayo.
- (2) Izinga lokumeta nokubala liya kugqitywa nguloo mntu umetayo—
  - (a) njengezinga elichaphazela kakhulu loo mntu ufake isikhalazo sengxolo; okanye
  - (b) njengezinga kwisityaba sepropati ekuthethwa ngayo elimele umba lowo wengxolo ekukhalazwa ngawo.

**Ukubekwa kwabasebenzi abajongene nengxolo bebekwa ngoomasipala bengingqi**

9. Umasipala wengingqi kufuneka ahi ungaphelanga unyaka emva kopapasho lwale migaqo—
  - (a) abeke umsebenzi kamasipala okwaziyo ukwenza lo msebenzi ukuba athathe uxanduva lokuphunyezwa kwale migaqo kummandla waloo masipala;
  - (b) abeke umsebenzi kamasipala onolwazi nezakhono zokulawula ingxolo nokumeta izinga lengxolo, obhalisiweyo kwibhunga lezobunzululwazi, ubunjinieli nezempilo, ekufuneka ejongene—
    - (i) nophononongo, uhlolo, ukwamkela nokucebisa ngovavanyo lwefuthe lengxolo nezicwangciso zokulawula ingxolo;
    - (ii) ukwamkela amanyathelo okunqanda ingxolo;
    - (iii) amete ifuthe lezinga lengxolo abale nezinga lengxolo; yaye
    - (iv) aphonononge iimodeli kunye neentlobo zezixhobo zengxolo; yaye
  - (c) ukuba umasipala akabeki msebenzi njengoko kuchaziwe kumhlathi (b)—
    - (i) enze isivumelwano nomnye umasipala, atyumbe igosa lomnye umasipala ukuba lenze umsebenzi waloo msebenzi; okanye
    - (ii) aqeshe ingcali enezakhono zokulawula ingxolo ekwaziyo ukwenza imisebenzi efanele ukwenziwa nguloo msebenzi, xa kuyimfuneko.

**Inkqubo yokulawula ingxolo**

10. (1) Xa umntu efake isikhalazo sengxolo ephazamisayo kumasipala wengingqi, umntu otyunjweyo—
  - (a) makaphande ngesikhalazo eso ze abale okanye amete elandela imiqathango ye-SANS 10328 ukuba ingaba okunene loo ngxolo iyaphazamisa na;
  - (b) makasebenzise izinga lokubala ngaphandle kwalapho ingxolo eshiyekelcoyo inomahluko ongaphezulu kwe-10iBA kwizinga lokubala;
  - (c) ukuba ngaba loo ngxolo okunene iyaphazamisa, makakhuphe imiyalelo ebhaliweyo—
    - (i) ayithumele kumntu owenza ingxolo okanye ongunobangela waloo ngxolo; okanye
    - (ii) umnini, umntu ohlala okanye onoxanduva lweso sakhiwo kuthethwa ngaso,
 ukuba ayeke ukwenza ingxolo ephazamisayo okanye ayithohe iye kufikelela kwizinga elibekiweyo ngokweemfuno zale miqathango singaphelanga isithuba esibekwe kuloo myalelo.
- (2) Ukuba umntu ufunyaniswe ukuba wenza ingxolo ephazamisayo, umasipala wengingqi angamhlawulisa iindleko zokuqesha ingcali echazwe kumgaqo 9(c)(ii) eya kuphanda eso sikhalazo.
- (3) Isikhalazo esingene kumasipala wengingqi ngengxolo eaphukisayo kufuneka singene sibhalwe sayiafidavithi, echaza—
  - (a) uhlobo lwengxolo ekhathazayo;
  - (b) ixesha eyathi yaqatshelwa ngalo okokuqala le ngxolo;
  - (c) yathatha ixesha elingakanani na;

- (d) yayiphuma phi na le ngxolo iyinkathazo; kanaanjalo
- (e) ukuba iyafumaneka, kunikwe nedilesi negama lomntu ohlala kuloo ndawo iphuma kuyo le ngxolo ikhathazayo.
- (4) Xe efumene isikhalazo sengxolo ecaphukisayo, umntu ogunyazisiweyo—
- (a) kufuneka aphande ngesi sikhalazo; yaye
- (b) ukuba, ngokokubona kwakhe, okunene loo ngxolo iyacaphukisa okanye iyakhathaza, angathumela imiyalelo ebhaliweyo—
- (i) ayithumele kumntu owenza ingxolo okanye ongunobangela waloo ngxolo; okanye
- (ii) umnini, umntu ohlala okanye onoxanduva lweso sakhiwo kuthethwa ngaso,
- ukuba ayeke ukwenza ingxolo ecaphukisayo singaphelanga isithuba esibekwe kuloo myalelo.

**Amagunya oomasipala beengingqi nabantu abagunyazisiweyo**

11. (1) UMasipala unakho—
- (a) ukubeka imiqathango xa enikeza imvume okanye esaphulela umntu ukuba angangathobeli le migaqo; kanaanjalo
- (b) esebenzisa imiqathango echaphazelekayo yawo nawuphi na omnye umthetho, angabeka izixhobo zokumeta izinga lengxolo okanye izixhobo ezibunjalo, iimpawu zendlela okanye izaziso naphi na apho anegunya lokulawula khona.
- (2) Umntu ogunyazisiweyo, angathi elandela isikhalazo esingenileyo, sengxolo ecaphukisayo okanye ephazamisayo, angene ngaphakathi kwisakhiwo ukuya kwenza uhlobo okanye ukuya kuphanda kodwa oko kuya kuxhomekeka kumgaqwana (3).
- (3) Umntu ogunyazisiweyo akanakungena kwindlu yomntu esiya kunyanzelisa imiqathango yomgaqwana (2) ngaphandle kokuba—
- (a) ufumene imvume yomninindlu okanye umntu ojongene nalo ndlu; okanye
- (b) abe ufumene isigunyaziso (iwaranti) ekhutshwe ngumantyi emva kokuba umantyi ezanelisile ukuba kukho isizathu sokukhutshwa kweso sigunyaziso.

**Iimeko ezixolelwayo okanye ezaphulelwayo**

12. (1) Umasipala wengingqi angavumela nawuphi umntu okanye indawo ukuba angayithobeli imiqathango yale migaqo—
- (a) ngokokubona kwakhe, okanye
- (b) xa umntu efake isicelo enika izizathu ezipheleleyo zokufaka eso sicelo.
- (2) Umfaki-sicelo ekubhekiswe kuye kumgaqwana 1(b) kufuneka, ngokwenkqubo efunwa ngumasipala, afumane izimvo ezibhaliweyo malunga nesicelo asifakileyo.
- (3) Inkqubo ekubhekiswe kuyo kumgaqwana (2) mayinike abantu abanomdla nabachaphazelekayo ithuba lokuba bangenise izimvo zabo ezibhaliweyo malunga nokuvunyelwa kwaloo mntu ukuba angathobeli le migaqo, yaye umfaki-sicelo anganika impendulo ebhaliweyo ephendula ezo zimvo zingenisiweyo.
- (4) Umasipala kufuneka, emva kokuqwalasela isicelo esifakiweyo, ngokwemimiselo yolawulo lwendalo esingqongileyo, phantsi kwemigaqo yeNEMA enze enye yezi zinto zilandelayo, ekwenza oko ngembalelwano—
- (a) amvumele umntu ofake isicelo ukuba axoleleke ekuthobeleni imigaqo, ebeka imiqathango yoxoleleko olo, ukuba ikhona;
- (b) usenokungavumi ukophulela umntu ze xa eceliwe anike izizathu zokwala ukunika isaphulelo; okanye
- (c) afune uvavanyo lwefuthe lwengxolo ngokwemiqathango yeSANS 10328 phambi kokuba enze isigqibo ekubhekiswe kuso kumhlathi (a) okanye (b).
- (5) Imiqathango ekubhekiswe kuyo kumgaqwana (4)(a) ingabandakanya oku, xa oko kuyimfuneko—
- (a) isithuba sesaphulelo eso, kubandakanywa amaxesha neentsuku apho izenzo ezinokwenza ingxolo zinokuvunyelwa khona;
- (b) ukuba ingaba isaziso esikwiSihlomelo 1, kufuneka sibekwe kwindawo ecacileyo na, nakwindawo nganye engena uluntu kweso sakhiwo;
- (c) ukuba ingaba amazinga engxolo kufuneka ebekelwe iliso na, ukuba kunjalo, kufuneka oko kwenziwe njani kwanokuba iirekhodi zigcinwe ndawoni na xa kukho umntu ofuna ukuzibona; kunye
- (d) nayiphi na eminye imiqathango yesaphulelo.
- (6) Umasipala wengingqi angenza izilungiso okanye atshintshe isaphulelo okanye imiqathango ayibekileyo kumgaqwana 4(a)—
- (a) ngokwakhe; okanye
- (b) xa umntu ofumene isaphulelo efake isicelo.

- (7) Isicelo esifakwe kulandelwa imiqathango yomgaqwana (6)(b) kufuneka sibhalwe yaye sikhathshwe zizizathu zezilungiso okanye zotshintsho.
- (8) Emva kokufumana isicelo kulandelwa imiqathango yomgaqwana (6)(b), umasipala wengingqi—
  - (a) kufuneka athathe ingqalelo yokuba ingaba ukuvuma eso sicelo kungachaphazeli kakubi na amalungelo abanye abanye abantu okanye amaqela; yaye
  - (b) unokuthi ngenxa yoko acele umfaki-sicelo anikeze ngezinye iinkcukacha.
- (9) Isaphulelo ekubhekiswe kuso kumgaqwana (4) asinakuba ngaphezulu konyaka omnye, ngaphandle kokuba sigunyaziswe ngokwemiqathango yomgaqo 4.
- (10) Ukuba kukho umqathango woxolelo ongathotyelwanga, umasipala wengingqi—
  - (a) angayalela loo mntu unoxanduva ukuba athobele loo mqathango; okanye
  - (b) arhoxise eso saphulelo ngoko nangoko.
- (11) Imbalelwano yesaphulelo kumele ukuba igcinwe endaweni leyo sikhutshelwe yona isaphulelo okanye igcinwe ngumntu owophulelweyo, ukuze umasipala okanye igosa lokuqinisekiswa kokuthotyelwa komthetho likwazi ukuyihlola xa licele ukuyibona.

#### Amatyala nezohlwayo

#### 13. (1) Umntu wenza ityala ukuba—

- (a) wophula okanye akathobeli imigaqo 2, 3, 4(2), 5, 6(1), 7(1) okanye 7(6);
  - (b) akathobeli okanye uyala ukuthobela umqathango obhaliweyo, umyalelo obhaliweyo, isaziso esibhaliweyo athe wasinikwa okanye esikhutshwe ngumasipala wengingqi okanye umntu ogunyazisiweyo ngokwemiqathango yale migaqo;
  - (c) ubhucabhuca, ususa, uyekisa, wonakalisa okanye wenze ukuba kungasebenzi nantoni na esetyenziswe okanye ebekwe kwindawo ethile ibekwa ngumasipala okanye ibekwa egameni likamasipala wengingqi okanye ngumntu ogunyazisiweyo esenzela ukuthotyelwa kwale miqathango, kubandakanywa umatshini wokubeka iliso kwingxolo, umatshini ocutha ingxolo, isixhobo sokumeta ingxolo okanye umatshini wesandi, okanye uphawu lwendlela okanye isaziso esinento yokwenza nengxolo;
  - (d) uyala ukunika imvume kumntu ogunyazisiweyo ukuba angene ahlole isakhiwo ngokwegunya lewaranti ekhutshwe kulandelwa imiqathango yomgaqo 11(3)(b);
  - (e) uyala ukunika iinkcukacha okanye ulwazi kumntu ogunyazisiweyo, ezifunwayo ngokusemthethweni nguloo mntu ogunyazisiweyo;
  - (f) uphazamisa okanye unqanda umntu ogunyazisiweyo ukuba enze umsebenzi wakhe; okanye
  - (g) unika ulwazi olungelulo okanye uphosisela umntu ogunyazisiweyo esazi ukuba uyaphosisa okanye uyamfahlekisa.
- (2) Umntu ogwetyele ukona ngokwale miqathango unokuthi ahlawuliswe imali okanye afakwe entolongweni isithuba esingekho ngaphezulu kweminyaka emibini okanye azifumane zombini ezi zigwebo, esemali nesokubanjwa.
  - (3) Umntu ogwetyelwe ukona ngokwale miqathango, nothi emva kokugwetywa aqhubeke esenza loo nto ayigwetyelweyo, okanye engenzi loo nto ebefanele ukuyenza, nto leyo ebonwa njengobutyala, wenza elinye ityala yaye unokuhlawuliswa imali engekho ngaphezulu kwama-R50 000 okanye afakwe isithuba esingekho ngaphezulu kweentsuku ezingamashumi amabini okanye azifumane zombini ezi zigwebo zibe zezosuku ngalunye esenza eli tyala.

#### Ukusebenza kwemigaqo

14. Le migaqo isebenza kubo bonke oomasipala abakwiPhondo.

#### Ubhangiso lwemigaqo

15. Le migaqo isebenza endaweni yemigaqo epashwe kwiSaziso sePhondo esinguNombolo 627 sika-1998 (iGazethi yePhondo yama-5309 yomhla wama-20 Novemba 1998) ebhangiswayo kungokunje.

#### Isihloko esifutshane

16. Le migaqo ibizwa ngokuba yiMigaqo yoLawulo lweNgxolo eNtshona Koloni, 2013.

#### Isihlomelo 1

Isaziso sokulumkisa ekubhekiswe kuso kumgaqo 12(5)(b) kufuneka singabikho ngaphantsi kwe-30 cm x 20 cm, ze isayizi yamagama ingabikho ngaphantsi ko-48. Isaziso kufuneka sibe nala magama alandelayo:

### ISILUMKISO

**INGXOLO IPHEZULU APHA NGAPHAKATHI  
UKUBA UHLELI IXESHA ELIDE, UNGAPHETHA USISITHULU**

**AGENDA      JOINT PLANNING, ECONOMIC AND PROTECTION      2018-02-06**  
**SERVICES COMMITTEE MEETING**

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<b>5.1.3</b>	<b>LIQUOR TRADING HOURS BY-LAW AMENDMENT</b>
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**1.      PURPOSE OF REPORT**

To submit the Draft Amended Stellenbosch Liquor Trading Hours By-law to Council for consideration, whereafter it could be published for public participation as envisaged in Sections 12 to 15 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

**2.      BACKGROUND**

Section 156 (2) of Constitution of the Republic of South Africa, 1966 reads as follows: *municipality may make and administer by-laws for the effective administration of matters which it has the right to administrate. In this instance it refers to the days and hours during which liquor may be sold by licensees and for matters related thereto.*

**3.      DISCUSSION**

The current Liquor Trading Hours By-law (**APPENDIX 1 with track changes**) was promulgated on 15 January 2016 in the Provincial Government Gazette 7753. Due to shortcomings the aforementioned policy is now reviewed. The reviewed policy (**APPENDIX 2**) with Schedule for Admission of Guilt Fines (**APPENDIX 3**) addresses the following changes:

- Bringing the definitions in line with definitions as postulated in the Integrated Zoning Scheme.
- Give powers to the municipal law enforcement officers to enforce the bylaw.
- Provide for new trading methods such as internet trading.
- Include the entire municipal area as jurisdiction applicable to this By-law
- Attempt to use a more consumer friendly language.
- Easy to enforce the By-law.
- Set maximum permissible trading hours with no provision for extension of hours to prevent administrative red tape.
- Provide maximum fines for transgressors irrespective of the size of the business.

**4.      COMMENTS FROM RELEVANT DEPARTMENTS**

**LEGAL SERVICES**

Supported, with minor adjustments which are incorporated in the Draft Amended Liquor Trading Hours By-law.

**AGENDA      JOINT PLANNING, ECONOMIC AND PROTECTION      2018-02-06**  
**SERVICES COMMITTEE MEETING**

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**COMMUNITY AND PROTECTION SERVICES**

Supported.

**RECOMMENDED**

- (a) that Council approves the Draft Amended Liquor Trading Hours By-law as per **APPENDIX 2** for public consultation purposes; and
- (b) that the Administration be mandated to advertise the said Draft Amended Liquor Trading Hours By-law for public comments where after same be submitted to Council for final consideration.

**MAYORAL COMMITTEE MEETING: 2017-11-10: ITEM 5.3.8**

**RESOLVED**

that this item be referred to a joint sitting of the Planning and Economic Development Portfolio Committee and the Protection Services Portfolio Committee, in order to advise the Executive Mayor.

<i>Meeting:</i>	<i>Joint Planning &amp; Prot. Serv: 2018-02-06</i>	<i>Submitted by Directorate:</i>	<i>Economic Development &amp; Planning Services</i>
<i>Ref No:</i>		<i>Author:</i>	<i>Manager: LED</i>
<i>Collab:</i>	<i>543168</i>	<i>Referred from:</i>	<i>Mayco:2017-10-11</i>

# APPENDIX 1



**STELLENBOSCH MUNICIPALITY**  
**LIQUOR TRADING HOURS BY-LAW**

To provide for days on which and hours during which liquor may be sold by licensees and for matters related thereto.

**PREAMBLE**

Stellenbosch Municipality, by virtue of the powers vested in it by section 156 (2) of the Constitution of the Republic of South Africa as amended, read with section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000-), herewith publish the By-law set out below.

In this by-law, words used in the masculine gender include the feminine. All singular meanings shall include the plural interpretation and vice versa.

The English text shall prevail in the event of an inconsistency between the different texts, unless the context otherwise indicates.

**INDEX**

- 1. Definitions
- 2. Application of this by-law
- 3. Interpretation General prohibition
- 4. Trading days and hours for sale and consumption of liquor on licensed premises
- 5. Trading days and hours for sale and consumption of liquor off licensed premises
- 6.5. Extension of trading times
- 7.6. Obligations of the licensee Display of licenses, certificates and information
- 7. Compliance Compliance and enforcement and enforcement
- 8.
- 9. Appeal
- 8. Offences and Penalties
- 10.9. Vicarious responsibility
- 11.10. Transitional provisions

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**1. DEFINITIONS**

4.

In this by-law unless the context otherwise indicates –

“Act” means the **Western Cape Liquor Act, 2008 (Act No 4 of 2008)**

“**agricultural area**” means an area predominantly zoned for agriculture or any other equivalent such as a small holding, zoning with the purpose of promoting and protecting agricultural activity on a farm as an important economic, environmental and cultural resources, where limited provision is made for non-agricultural uses to provide owners with an opportunity to increase the economic potential of their properties, without causing a significant negative impact on the primary agricultural resources;

“**authorized official**” means ~~a member of the South African Police Service, and / or a Liquor Inspector of the Western Cape Liquor Authority appointed as Peace Officer in a notice issued under Section 334(1) of the Criminal Procedure Act~~ law enforcement officer appointed by the Municipality, and/or a member of the South African Police Service;

“**business premises**” (~~besigheidsperseel~~) means a place from which business is conducted and may include a restaurant, pub, bar or tavern, spa or wellness centre, special function venue or other building for similar uses, but excludes a place of entertainment, guest accommodation establishment, hotel, sports and community club;

“**Council**” means the Municipal Council of Stellenbosch Municipality.

“**general business area**” means an area predominantly zoned for general business or any other equivalent zoning, with the purpose of promoting activity in a business district and development corridor;

“**guest accommodation establishment**” means premises used as temporary residential accommodation, and includes but not limited to the provision of meals for transient guests for compensation, also including backpackers' lodges, a bed-and-breakfast establishment, guest farm or lodge(s), as well as facilities for business meetings, conferences, events or training sessions of resident guests, but excludes a hotel;

“**guesthouse**” (gastehuis) means a commercial residential establishment of 15 or less bedrooms, accommodating no more than 30 guests at a time, for compensation, which:-

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(a) Primary source of business and purpose is the supply of tourist accommodation, meals and beverages (which may include liquor) for transient guests;

(a)

(b) May include facilities for business meetings or training sessions of guests on the property;

(b)

(c) A wellness ~~centre~~center and conference facility for transient guests with necessary consent of Council limited to service of guests only; and

(c)

(d) May consists of one or a group of buildings which are designed as a -harmonious architectural entity.

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“hotel” (hotel) is a commercial residential establishment of 16 or more bedrooms, accommodating more than 30 guests at a time, for compensation, and may include:-

- (a) A restaurant or restaurants forming part of the hotel;
- (a)
- (b) Conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel;
- (b)
- (c) Premises which are licensed to sell liquor for consumption on or off the property together with or without meals to guests and/or the public;
- (e)
- (d) May consist of one or a group of buildings which are designed as a harmonious architectural entity;
- (d)

But excludes a backpacker’s lodge, a bed-and-breakfast establishment, guesthouse, guest farm or lodge(s), as well as facilities for business meetings, conferences, events or training sessions of resident guests of on-consumption facilities.

“Industrial area” means an area predominantly zoned general industry or any other equivalent zoning, with the purpose to accommodate all forms of industry including manufacturing and related processing, but excludes noxious or hazardous risk activity;

“license” means a license referred to in section 33 of the Act and reference to “license” includes “temporary license”<sup>1</sup>;

“internet sales” means the sale of liquor to a purchaser who does not attend the licensed premises from which the liquor is sold but instead orders the delivery of liquor electronically through e-mail, internet websites, interactive digital TV or like manner and such sales will be deemed to occur at the time of delivery of the ordered liquor to the purchaser.

<sup>1</sup> Section 33 of the Act provides for the following categories of licenses –

- (a) a license for the micro-manufacture and sale of liquor for consumption both on and off the premises where the liquor is sold;
- (b) a license for the sale of liquor for consumption on the premises where the liquor is sold;
- (c) a license for the sale of liquor for consumption off the premises where the liquor is sold;
- (d) in exceptional circumstances, a license for the sale of liquor for consumption both on and off the premises where the liquor is sold;
- (e) a license for the sale of liquor for consumption on or off the premises upon which liquor is sold at special events; and
- (f) a temporary liquor license for the sale of liquor for consumption on or off the premises upon which liquor is sold.

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“licensee” means the person ~~to whom who has a valid liquor licence~~ licensee<sup>1</sup> has been issued in terms of the Act;

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“licensed premises” means the premises specified in the liquor ~~licence~~ license or certificate or temporary license issued in terms the Act;

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“liquor” means any liquid or substance which contains or is intended to contain more than 1% of alcohol by volume or mass, but excluding—

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(a) methylated spirits;

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(a)

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(b) medicine which is subject to registration in terms of the Medicines and Related Substances Act, 1965 (Act 101 of 1965); and/or

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(b)

(c) products which are not intended for human consumption

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“liquor authority” means the Western Cape Liquor Authority established by section 2(1) of the Act;

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“manufacture” means produce or bottle liquor with the intention of selling it;

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“mixed use development” means any urban, suburban or village development, or even housing a single building, that blends a combination of residential, commercial, cultural, institutional or industrial uses, where these functions are physically and functionally integrated, and that provides pedestrian connections.

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<sup>1</sup> Section 33 of the Act provides for the following categories of licences—

(a) ~~a licence for the micro-manufactured and sale of liquor for consumption both on and off the premises where the liquor is sold;~~

(b) ~~a licence for the sale of liquor for consumption on the premises where the liquor is sold;~~

(c) ~~a licence for the sale of liquor for consumption off the premises where the liquor is sold;~~

(d) ~~in exceptional circumstances, a licence for the sale of liquor for consumption both on and off the premises where the liquor is sold;~~

**“municipalityMunicipality”** means Stellenbosch Municipality established in terms of section 12 of the Local Government-: Municipal Structures Act, 1998 (Act 117 of 1998), published in Provincial Notice 5643 dated 4 December 2000 and includes any political office- bearer, councillorcouncilor, or any employee therefore acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political office-bearer, councillor, or employeesacting in terms of delegated or sub-delegated authority;

**“person”** includes –

- (a) any organ of state;
- (b) any company or close corporation incorporated or registered as such under any law;
- (c) any body of persons corporate or unincorporated; and
- (d) any trust;

**“place of entertainment”** (vermaaklikheidsplek) is a place used predominantly for commercial entertainment where patrons participate in the activities or observe performances, which may on a regular basis attract large numbers of people, and may generate noise from music or revelry, and where alcohol may be consumed, such as a night club, pub, cinema, theatre, amusement arcade;

**“place of sport and recreation”** (buitemuurse ontspanningsplek) means land which may be public or privately owned and which is set aside for outdoor sport and recreation such as sports grounds and fields, sports stadiums, putt-putt, miniature golf, golf courses, and where the following buildings are permitted only with Council's additional consent, ablution facilities, clubhouse, stores, gatehouses and related administrative buildings;**“premises”** means a place, land, building, part of a building, vehicle or vessel which is mainly used for the conveyance of tourists;

**“residential area”** means an area, predominantly zoned informal, single or general residential or any equivalent zoning, with the purpose to predominantly house single family dwelling houses in low to medium density neighbourhoods, as well as higher density living accommodation and which includes controlled opportunities for home employment, additional dwellings and low intensity mixed use development;

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**“room service facility”** means a mini bar or self-help facility for the consumption of liquor in guest rooms or a hotel room, and includes a call-up service for resident guests;

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**“sell”** includes supply, exchange, offer for sale, display for the purpose of sale or authorise, direct or allow a sale, supply, exchange, offer for sale or display for sale and “sale” and “sold” have corresponding meanings;

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**“sparkling wine”** means an effervescent wine resulting from the fermentation of grapes, whether by natural or artificial process, and includes Champagne;

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**“specific business”** (spesifieke besigheid) means a business use of a particular nature, but within the compass of section 10(7) that is prescribed for a specific site by the Council **“sports and community club”** means premises or a facility used for the gathering of community and civic organizations or associations, sports clubs or other social or recreational clubs run mostly not for profit and may include community service clubs and community centres or similar amenity facilities, but excludes a night club; **“supply”** means to place a person in possession or control thereof;

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**“temporary license”** means a temporary license referred to in section 48 of the Act;

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**“the Act”** means the Western Cape Liquor Act 4 of 2008, as amended;

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**“trading days”** means the days on which liquor may be sold during trading hours;

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hours; **“trading hours”** means the hours during which liquor may be sold on trading days;

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(1) a licence for the sale of liquor for consumption on or off the premises upon which liquor is sold at special events; and  
(2) a temporary liquor licence for the sale for consumption on or off the premises upon which liquor is sold.  
<sup>2</sup> Definitions of Stellenbosch Zoning scheme regulations

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**“wine”** means wine as defined in Section 1 of the Liquor Products Act 60 of 1989;

**“winery”** means premises or facilities which are used in the production of wine and such premises or facilities include facilities for crushing grapes and fermentation and aging of wine, tasting rooms, barrel and storage rooms, bottling rooms, tank rooms, laboratories or offices and other accessory or ancillary facilities incidental to the production of wine and accessible by the public, which may include:-

- (a) A restaurant and other food services; or
- (b) A subsidiary retail facility to tours or visitors selling wines of the specific winery excluding any other form of liquor.

**“wine industry”**(wynbedryf) means a site or building, or portion of a site or building utilized or intended to be utilized for the manufacture of liquor in the form of wine or spirits from grapes.

**2. APPLICATION**

**2. OF THIS BY-LAW**

This by-law applies to all licensees that sell liquor within the area of jurisdiction of the Municipality.

Licenses, their managers, their employees and any other person selling Liquor within the geographical area of the Municipality, limited to those falling within the jurisdiction of the Magistrates' Court of Stellenbosch.

**3. INTERPRETATION GENERAL PROHIBITION**

Any authorising in terms of this by-law, should not be interpreted as the sanctioning of any trade, which had not been approved in terms of relevant legislation. No licensee may sell liquor outside of the hours permitted in terms of this By-law.

**4. TRADING DAYS AND HOURS FOR SALE AND CONSUMPTION OF LIQUOR**

**4. ON LICENSED PREMISES**

(1) A licensee may sell liquor for consumption on the licensed premises

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on the following days and hours;

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~~(1)~~

~~(a) On any day; and~~

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~~(a)~~

~~(b) During the hours of trade as set out in the Schedule.~~

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~~(b)(2) A licensee may not allow the consumption of liquor on the licensed premises more than 30 minutes after the time set out in the Schedule as the time at which the sale of liquor is to cease.~~

~~(3) Despite subsection (1), a hotel or guest accommodation establishment or guest house licensed to sell liquor may offer a room service facility at any time of the day on any day.~~

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~~(2)~~

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~~(4) Despite subsection (1), a licensee may serve sparkling wine, sell sparkling wine outside of the hours of trade set out in the Schedule from 08:00 on any day provided it is sold with a meal.~~

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~~(3)~~

~~from 8.00 to 23.00 for 7 days a week.~~

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~~(5) Despite subsection (1) a licensee, licensed to manufacture liquor, may operate a tasting facility to offer the sampling of liquor manufactured on the licensed premises on the following days and hours:~~

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~~(a) On any day; and~~

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~~(a)(b) from 08:00 and until the time set out in the Schedule as the time at which the sale of liquor is to cease;~~

~~(b) as part of a meal; and~~

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~~(c) to guests who are part of an organized function where admittance is controlled.~~

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**5. TRADING DAYS AND HOURS FOR SALE OF LIQUOR OFF LICENSED PREMISES INCLUDING INTERNET SALES**

5.

(1) A licensee may sell liquor for consumption off the licensed premises on the following days and hours:-

(1) :-

(a) Monday to Saturday from 09:00 – 20:00

(a)

(b) Sunday from 09:00-16:00

(b)

(2) Despite the provisions of subsection (1) a Winery or any other licensee within the boundaries of Stellenbosch agriculture area (included, but not limited, to wineries) will be permitted to trade a licensee, licensed to manufacture liquor, may sell liquor manufactured on the licensed premises on the following days and hours:-

(2)

(a) Monday to Saturday from 08:00 – 20:00

(a)

(b) Sunday from 09:00-18:00

**6. EXTENSION OF TRADING TIMES**

Application for extended trading days and hours pertaining to Tourism facility, Special Events, private functions or any other event or facility motivated by the applicant:-

(1) Council has authority to approve or decline, or to approve with special terms and conditions as it may resolve any applications for extension of trading days and/or hours.

(2) A licensee may, upon payment of the required fee, submit a written application referred to in (a) to the office of the Municipal Manager.

(3) The Municipal Manager will prepare the application in the form of an item to Council for final decision, taking in consideration the following factors:-

- (a) Outcome of community consultation;
- (b) Public interest and impact on the environment;
- (c) The risks to the surrounding community;

(d) Nuisance on the surrounding community;

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- (e) ~~The possible benefits of extended liquor trading hours and days on the surrounding community;~~
- (f) ~~Any other relevant factor.~~

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**7. ~~OBLIGATIONS ON THE LICENSEE DISPLAY OF LICENSES, CERTIFICATES AND INFORMATION~~**

**6. \_\_\_\_\_**

**(1) ~~Display of signage and certificates~~**

~~(a) 1~~ A licensee must, to the satisfaction of the authorized ~~authorised~~ official, ensure that ~~the~~ following certificates are prominently displayed inside the licensed premises:

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(a) The liquor license issued to the licensee;

(b) The current renewal certificate alternatively proof of payment of renewal fee for current year;

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(c) The certificate issued by the Municipality stating the zoning or land use in respect of the licensed premises ~~for purposes of this by-law;~~

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~~(i) \_\_\_\_\_~~

~~(ii) The population certificate in respect of the premises issued in terms of the Fire Safety by-law of the Municipality;~~

**Comment [M1]:** Still Applicable??

~~(iii)(d) The Business license and/or certificate issued by the Municipality to the licensee.~~

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(2) A licensee must, to the satisfaction of the authorized official, ensure that the following information are prominently displayed on the front door or window of the premises in characters not less than five centimetres in height;

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(b)

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(a) The liquor license number under which liquor may be sold; and

(i)

(ii) The hours during which liquor may be sold.

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**(2) Safety and Security**

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(a) A licensee must ensure compliance with all applicable legislation.

(b) A licensee must ensure that reasonable and adequate safety and security measures are in place for the protection of patrons by ensuring, amongst others but not limited to, that:-

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(i) the storage of goods and equipment and the condition of the premises and any structure thereon do not endanger the lives of patrons inside the premises; and

(ii) there is adequate lighting on the outside of the premises where patrons and staff access and exit the licensed premises.

**7. COMPLIANCE AND ENFORCEMENT COMPLIANCE AND ENFORCEMENT**

**8.**

(1) An Authorized Official

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(1) may, in the performance of his or her functions in terms of this by-law or the Act, at all reasonable times enter-

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(a) any licensed premises for purposes of monitoring compliance with this By-law;

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(b) shall have the power to issue an admission of guilt fine or a compounding notice as provided for in terms of section 57(5)(a) or 341(5) of the Criminal Procedure Act 51 of 1977.

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(a)

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(b) any premises in respect of which a liquor license application is pending;

(c) any premises on which he or she on reasonable grounds suspects that liquor is being sold contrary to the provisions of

~~this by-law of the Act; and make such investigation, enquiries or inspections as he or she may deem necessary.~~

~~(2) When entering premises in terms of this section, the authorized official must on request identify himself or herself to the person in charge of the premises.~~

~~(3) An authorized official may issue and serve a notice of non-compliance, on the licensee or any person in control of licensed premises, calling upon such person to comply with the provisions of this by-law, a condition of the license or the Act within a specified but reasonable time.~~

~~(4) A compliance notice must stipulate:-~~

~~(a) the provisions of the by-law, license condition or the Act that must be complied with;~~

~~(b) the act or omission constituting non-compliance;~~

~~(c) the measures which must be taken to comply;~~

~~(d) the date or time by which compliance must be achieved, where applicable;~~

~~(e) the possible consequences of non-compliance.~~

~~(5)(2) An authorized official may issue the licensee or any person in control of licensed premises with a fine as provided A person who hinders an authorised official in the execution of his or her duties commits an offence in the fines list of this by-law or the Act.~~

**9. APPEAL**

A person or judicial entity whose rights are affected by a decision of the Municipality in terms of delegated authority may appeal 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, 2000 (Act 32 of 2000) to the Municipal Manager within 21 days of the date of notification of the decision.

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**8. OFFENCES AND PENALTIES**

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- (1) A person who contravenes any provision of this By-law commits an offence.
- (2) A licensee who commits an offence referred to in subsection (1) is, on conviction, liable for a fine as the court may deem fit to impose or to a term of imprisonment, or both such fine or imprisonment.
- (3) Any person who commits a continuing offence shall be guilty of an offence for each day during which that person fails to comply with this By-law.
- (4) A court convicting a person of an offence under this By-law may impose alternative sentencing in place of a fine or imprisonment.

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A licensee who contravenes or fails to comply with any

- (1) Provision of this by-law;
- (2) Condition or instruction in connection with this by-law; or
- (3) Notice from an authorized official,

shall be guilty of an offence and is liable to pay a fine as determined by the Magistrate's Court or authorised accordingly in the fine list from time to time, by the Magistrate in the area, or the fine list in terms of the Act, whichever is applicable at the time concerned, or to imprisonment as determined by a Court, or both, or any other punishment which the Court may find appropriate in the circumstances.

**9. VICARIOUS RESPONSIBILITY**

(1) If an agent or employee of a licensee does or omits to do anything, which, if it were done or omitted by the licensee, would be an offence in terms of this By-law, the licensee is deemed to have done or omitted to do that act, except where-

a. the licensee neither connived at, permitted or allowed the act or omission;

b. the licensee took such steps as he or she was reasonably able to take in order to prevent the act or omission; and

c. the act or omission did not fall within the scope of the employment or authority of the manager, agent or employee.

(2) The fact that a licensee has issued instruction prohibiting an act or omission is not in itself sufficient to prove that he or she took the steps required by subsection 1(b).

#### 10. TRANSITIONAL PROVISIONS

44

The trading hours in respect of any license for premises upon which liquor may be sold for consumption either on or off the licensed premises, or both on and off licensed premises, issued prior to the commencement of this ~~b~~By-law will be replaced by the provisions of this ~~b~~By-law from the date of publication of this ~~b~~By-law.

#### 11. SHORT TITLE

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This ~~b~~By-law is called the "Stellenbosch Liquor Trading Hours By-Law" and shall come into operation ~~as soon as it is published on the date of publication~~ in the Provincial Gazette.

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**SCHEDULE**

TRADING HOURS FOR ON CONSUMPTION LICENSED PREMISES Trading hours for selling liquor on licensed premises is according to the certificate provided for in 4(1)(a)(i) and (ii) are:

<b>LOCATION CATEGORY &amp; LICENSED PREMISES TYPE (zoning) LAND USE / ZONING TYPE</b> (as determined by zoning certificate)	<b>MAXIMUM PERMITTED TRADING HOURS</b>
<b>1. RESIDENTIAL AREA</b> Residential area	Monday – Saturday from 11:00 to 00:00 Sunday from 11:00 to 21:00
<b>2. LOCAL OR NEIGHBOURHOOD BUSINESS</b> Local or neighborhood business	11:00 to 00:00
<b>3. GENERAL BUSINESS AREA</b> Central business district	Monday – Saturday from 10:00 to 02:00 Sunday from 10:00 to 02:00
<b>4. INDUSTRIAL AREA</b> Industrial area (Including mixed use area)	Monday – Saturday from 10:00 to 02:00 Sunday from 11:00 to 02:00
<b>5. Agricultural area / Rural area</b>	11:00 to 02:00
<b>6. Other ad hoc locations</b>	

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Special events	10:00 – 002:00 or as determined by event permit whichever is more restrictive
Vehicle or vessel mainly used for the conveyance of tourists	11:00 – 02:00
(a) Industrial area including mixed-use area	
(b) Business premises/ Specific business	

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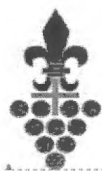


**Note : Determine of application of applicable location category**

Where the location category as set out above is unclear or in dispute or difficult to determine or areas are not zoned homogenously (e.g. a business zoned premises in the middle of a residential area) then the actual zoning, consent use or departure rights of the subject licensed premises will take precedence in order to determine the category, and in terms of Section 6(1)(a)(i) above.

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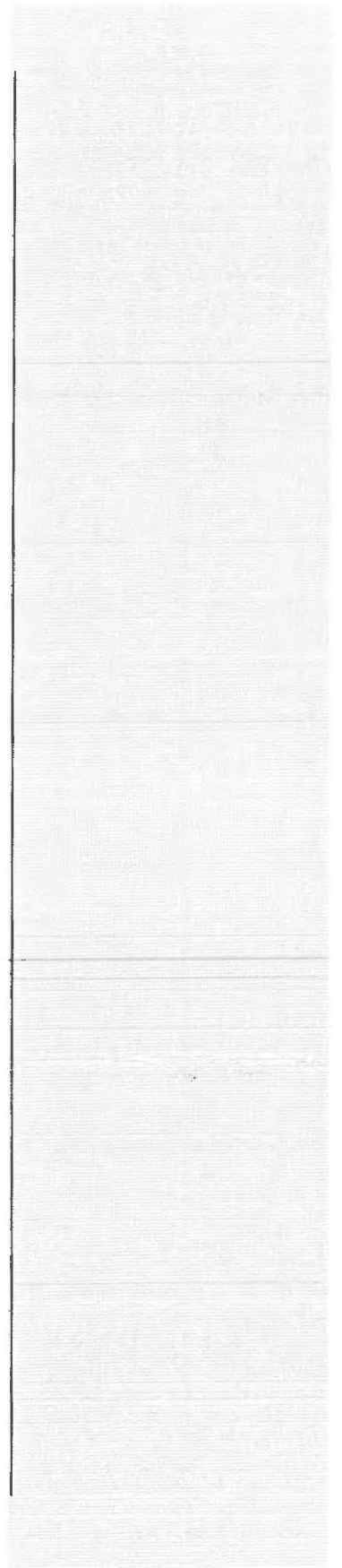
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Stellenbosch Munisipaliteit, uit hoofde van die gesag aan hom verleen deur artikel 156  
(2) van die Grondwet van die Republiek van Suid-Afrika soos gewysig, gelees



tesame met artikel 13 van die Plaaslike Regering: Municipale Stelselwet, 2000 (Wet 32 of 2000), publiseer hiermee die Verordening hieronder uiteengesit.

In hierdie Verordening sluit woorde in die manlike geslag die vroulike in.

Alle enkelvoudige betekenisse sluit die meervoudige vertolking in, en omgekeerd.

Die Engelse teks geniet voorrang in die geval van 'n teenstrydigheid tussen die verskillende tekste, tensy die konteks anders aandui.

#### INDEKS

1. Definisies
  2. Toepassing van hierdie verordening
  3. Interpretasie
  4. Handelsdae en ure vir die verkoop en verbruik van drank binne gelisensieerde persele
  5. Handelsdae en ure vir die verkoop en verbruik van drank buite gelisensieerde persele
  6. Verlenging van handelsure
  7. Verpligtinge van die lisensiehouer
  8. Nakoming en toepassing
  9. Appèl
  10. Oortreding en strawwe
  11. Oorgangsbepalings
  12. Kort titel
- Skedule

## 1. DEFINISIES

In hierdie verordening, tensy die konteks anders aandui, beteken—

“**algemene besigheidsgebied**” beteken ’n gebied hoofsaaklike gesoneer vir algemene besigheid of enige ander ekwivalente sonering, met die doel om aktiwiteit in ’n sakegebied of ontwikkelingskorridor te bevorder;

“**besigheidsperseel**” beteken ’n plek waar sake gedoen word en mag ’n restaurant, kuierplek, kroeg of taverne, spa of gesondheidsentrum, spesiale funksie lokaal of ander gebou vir soortgelyke gebruik insluit, maar sluit ’n plek van vermaak, gasteakkommodasie, hotel, sport- of gemeenskapsklub uit;

“**buitemuurse ontspanningsplek**” beteken grond wat in publieke of privaatbesit mag wees en wat opsygosit is vir buitemuurse sport en ontspanning, soos sportterreine en velde, sportstadions, putt-putt, mini-gholf, gholfbane, en waar die volgende geboue toegelaat word slegs met bykomende verlof van die Raad: ablusiefasiliteite, klubhuis, store, hek huise en verwante administratiewe geboue;

“**drank**” beteken enige vloeistof of stof wat 1% alkohol per volume of massa bevat of bedoel is om te bevat, maar uitsluitend—

- (a) brandspiritus;
- (b) medisyne wat onderhewig is aan registrasie in terme van die Wet op Medisyne en Verwante Stowwe, 1965 (Wet 101 van 1965); en/of
- (c) produkte wat nie bedoel is vir menslike verbruik nie;

“**drankowerheid**” beteken die Wes-Kaapse Drankowerheid wat ingestel is deur artikel 2(1) van die Wet;

“**landbougebied**” ’n gebied hoofsaaklike gesoneer vir landbou of enige ander ekwivalent soos ’n kleinhoewe, sonering met die doel om landbou-aktiwiteit op ’n plaas te bevorder en beskerm as belangrike ekonomiese, omgewings- en kultuurhulpbron, waar beperkte voorsiening gemaak word vir nie-landboudeeleindes om eienaars die geleentheid te voorsien om die ekonomiese potensiaal van hul eiendom te verbeter, sonder om ’n beduidende negatiewe impak op die primêre landbouhulpbronne te hê;

“**gasteakkommodasie-instansie**” beteken perseel wat gebruik word as tydelike residensiële akkommodasie, en sluit in maar is nie beperk nie tot die verskaffing van maaltye vir tydelike gaste teen vergoeding, ook insluitend “backpackers’ lodges”, bod-en-ontbyt-instansies, gasteplase of lodge(s), sowel as fasiliteite vir sakevergaderings, konferensies, funksies of opleidingsessies vir inwonende gaste, met uitsluiting van ’n hotel;

“**gastehuis**” beteken ’n kommersiële residensiële instansie van 15 of minder slaapkamers, wat nie meer as 30 gaste nie op ’n keer huisves, teen vergoeding, waar:

- (a) Die primêre bron van besigheid en doelstelling die voorsiening is van toeriste-akkommodasie, maaltye en drankies (wat alkoholiese drank mag insluit) aan tydelike gaste;
- (b) Dit fasiliteite vir sakevergaderings of opleidingsessie vir gaste op die perseel mag insluit;
- (c) ’n Gesondheidsentrum en konferensiefasiliteite vir tydelike gaste met nodige verlof van die Raad beperk word tot diens aan gaste alleenlik; en

(d) Dit mag bestaan uit een of 'n groep geboue wat ontwerp is as 'n harmonieuse argitektoniese eenheid.

**"gelisensieerde perseel"** beteken die perseel gespesifiseer in die dranklisensie of sertifikaat uitgereik in terme van die Wet;

**"gemagtigde beampte"** beteken 'n lid van die Suid-Afrikaanse Polisie diens, en / of 'n Drankinspekteur van die Wes-Kaapse Drankowerheid aangestel as Vredesbeampte in 'n kennisgewing wat uitgereik is onder Artikel 334(1) van die Strafproseswet;

**"gemengde gebruik ontwikkeling"** beteken enige stedelike, voorstedelike of dorpsontwikkeling, of selfs behuising in 'n enkele gebou, wat 'n kombinasie van residensiële, kommersiële, kulturele, institusionele of industriële gebruike vormeng, waar daardie funksie fisies en funksioneel geïntegreer is, en wat voetgangerverbinding verskaf;

**"handelsdae"** beteken die dae waarop drank verkoop mag word tydens handelsure;

**"handelsure"** beteken die ure waartydens drank verkoop mag word op handelsdae

**"hotel"** is 'n kommersiële residensiële instansie van 16 of meer slaapkamers wat huisvesting verskaf aan meer as 30 gaste op 'n keer, teen vergoeding, en mag insluit:-

- (a) 'n Restaurant of restaurante wat deel vorm van die hotel;
- (b) Konferensie- en vermaaklikheidsfasiliteite wat ondergeskik en aanvullend is tot die dominante gebruik van die perseel as 'n hotel;
- (c) Persele wat gelisensieer is om drank vir verbruik binne of buite die perseel te verkoop met of sonder maaltye vir gaste en/of die publiek;
- (d) Mag bestaan uit een of 'n groep geboue wat ontwerp is as 'n harmonieuse argitektoniese entiteit;

Maar sluit "backpacker's lodge(s)", bed en ontbyt instansies, gastehuisse, gasteplase of lodge(s), sowel as fasiliteite vir sakevergaderings, konferensies, funksies of opleidingsessies vir inwonende gaste of verbruik op die perseel uit.

**"Industriële gebied"** beteken 'n gebied hoofsaaklik gesoneer vir algemene nywerhede of enige ander ekwivalente sonering, met die doel om alle vorme van nywerhede te akkommodeer insluitend vervaardiging en verwante prosessering, maar sluit skadelike of gevaarlike aktiwiteite uit;

**"kamerdiensfasiliteit"** beteken 'n mini-kroeg of selfhelp-fasiliteit vir die verbruik van drank in gastekamers of 'n hotelkamer en sluit 'n beddiens vir residensiële gaste in.

**"lisensiehouer"** beteken die persoon wat 'n geldige dranklisensie<sup>†</sup> hou wat uitgereik is in terme van die Wet;

<sup>†</sup> Artikel 33 van die Wet maak voorsiening vir die volgende kategorieë lisensies—

- (a) 'n lisensie vir die mikro-vervaardiging of verkoop van drank vir verbruik sowel binne of buite die perseel waar die drank verkoop word;
- (b) 'n lisensie vir die verkoop van drank vir verbruik binne die perseel waar die drank verkoop word;
- (c) 'n lisensie vir die verkoop van drank vir verbruik buite die perseel waar die drank verkoop word;
- (d) in buitengewone omstandighede, 'n lisensie vir die verkoop van drank vir verbruik sowel binne of buite die perseel waar die drank verkoop word;
- (e) 'n lisensie vir die verkoop van drank vir verbruik binne of buite die perseel wat verkoop word by spesiale geleenthede; en
- (f) 'n tydelike dranklisensie vir die verkoop vir verbruik binne of buite die perseel waar drank verkoop word.

**“munisipaliteit”** beteken Stellenbosch Munisipaliteit gestig in terme van artikel 12 van die Plaaslike Regering: Wet op Munisipale Strukture, 1998 (Wet 117 van 1998), gepubliseer in Provinsiale Kennisgewing 5643 gedateer 4 Desember 2000 en sluit enige politieke ampsdraer, raadslid, of enige werknemer in, wat dus optree in verband met hierdie Verordening uit hoofde van ’n bevoegdheid wat setel in die munisipaliteit en gedelegeer of gesubdelegeer tot so ’n politieke ampsdraer, raadslid of werknemers;

**“Raad”** beteken die Munisipale Raad van Stellenbosch Munisipaliteit;

**“residensiële gebied”** beteken ’n gebied, hoofsaaklike gesoneer vir informele, enkel of algemene residensiële gebruik of ekwivalente sonering, met die doel om hoofsaaklik enkel-familiewoonhuise in lae tot medium digtheid buurte te verskaf, sowel as hoër digtheid woonakkommodasie en wat insluit beheerde geleentheid vir tuisdiensneming, addisionele wooneenhede en lae intensiteit gemengde gebruik ontwikkeling;

**“spesifieke besigheid”** beteken ’n besigheidsgebruik van ’n spesifieke aard, maar binne die bestek van artikel 10(7) wat deur die Raad spesifieke perseel;

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voorgeskrif word vir 'n

“**sport- en gemeenskapsklub**” beteken die perseel of 'n fasiliteit wat gebruik word vir die byeenkoms van gemeenskap- en burgerlike organisasies of assosiasies, sportklubs of sosiale of ontspanningsklubs wat meestal nie-winsgewend is en mag gemeenskapsdiensklubs en gemeenskapsentrums of soortgelyke gerief-fasiliteite insluit, maar sluit 'n nagklub uit;

“**vermaaklikheidsplek**” is 'n plek wat hoofsaaklik gebruik word vir kommersiële vermaak waar besoekers deelneem aan die aktiwiteite, of vertonings waarnaem, wat op 'n gereelde basis groot getalle mense mag trek, en geraas van musiek of joligheid mag veroorsaak, en waar alkohol verbruik word, soos 'n nagklub, kuierplek, bieskoop, teater, vermaaklikheidsarkade;

“**vonkelwyn**” beteken 'n bruiswyn wat ontstaan uit die fermentasie van druiwe, hetsy deur 'n natuurlike of kunsmatige proses, en sluit Sjampanje in;

“**Wet**” die Wes-Kaapse Drankwet, 2008 (Wet Nr. 4 van 2008) soos gewysig;

“**wyn**” beteken wyn soos gedefinieer in Artikel 1 van die Wet op Drankprodukte, Wet 60 van 1989;

“**wynmakery**” beteken persele of fasiliteite wat gebruik word in die produksie van wyn en sulke persele of fasiliteite sluit in fasiliteite vir die pars van druiwe en die fermentasie en veroudering van wyn, proelekale, vat en pakkamers, bottelingskamers, tenkkamers, laboratoriums of kantore en ander bykomende of aanvullende fasiliteite verbode aan die produksie van wyn en toeganklik vir die publiek, wat mag insluit:-

- (a) 'n Restaurant en ander voedseldienste; of
- (b) 'n Ondergoskikte kleinhandelsfasiliteit vir toere of besoekers waar wyne van die spesifieke wynmakery verkoop word, met uitsluiting van enige ander vorm van drank.

“**wynbedryf**” beteken 'n perseel of gebou, of deel van 'n perseel of gebou wat benut word vir, of bedoel is om benut te word vir die vervaardiging van drank in die vorm van wyn of spiritus van druiwe.

<sup>2</sup> Definiesies van Stellenbosch-Soneringsskema-regulasies



**2. TOEPASSING VAN HIERDIE VERORDENING**

Hierdie verordening is van toepassing op alle—

Lisensiehouers, hul bestuurders, hul werknemers en enige ander persoon wat Drank verkoop binne die geografiese gebied van die Munisipaliteit, beperk tot diene wat val binne die jurisdiksie van die Landdros van Stellenbosch.

**3. INTERPRETASIE**

Enige magtiging in terme van hierdie verordening, sal nie geïnterpreteer word as bekragtiging van enige handel, wat nie goedgekeur is in terme van relevante wetgewing nie.

**4. HANDELSDAE EN URE VIR DIE VERKOOP EN VERBRUIK VAN DRANK BINNE GELISENSIEERDE PERSELE**

(1) 'n Lisensiehouer mag drank vir verbruik binne gelisensieerde persele verkoop op die volgende dae en ure:

(a) Op alle dae;

(b) Tydens die handelsure soos uiteengesit in die Skedule.

(2) Ten spyte van subartikel (1), mag 'n hotel of gasteakkommodasie-instansie of gastehuis wat gelisensieer is om drank te verkoop, 'n kamerdiensfasiliteit te enige tyd van die dag bied.

(3) Ten spyte van subartikel (1), mag 'n lisensiehouer vonkelwyn bedien;

(a) van 8.00 tot 23.00 vir 7 dae per week;

(b) as deel van 'n maaltyd; en

(c) aan gaste wat deel is van 'n georganiseerde funksie waar toegangbeheer word.

**5. HANDELSDAE EN URE VIR DIE VERKOOP VAN DRANK BUITE GELISENSIEERDE PERSELE**

(1) 'n Lisensiehouer mag drank vir gebruik buite gelisensieerde persele verkoop op die volgende dae en ure:

(a) Maandae tot Saterdag van 09.00—20.00

(b) Sondag van 09.00—16.00

(2) Ten spyte van die bepalings van subartikel (1) sal 'n Wynmakery of enige ander lisensiehouer binne die grens van Stellenbosch *landbougebied* (ingesluit maar nie beperk nie tot wynbedryf) toegelaat word om handel te dryf op die volgende dae en ure:

(a) Maandae tot Saterdag van 08.00—20.00

(b) Sondag van 09.00—18.00

## 6. — UITBREIDING VAN HANDELSURE

Aansoeke vir verlengde handelsdae en ure rakende 'n Toerismefasiliteit, Speciale Geleentheid, private geleentheid of enige ander geleentheid of fasiliteit gemotiveer deur die aansoeker:-

- (1) Die Raad het die gesag om enige aansoek vir verlenging van handelsdae en/of ure goed of af te keur, of goed te keur met spesiale terme en voorwaardes soos besluit mag word.
- (2) 'n Lisensiehouer mag, by die betaling van die vereiste fooi, 'n geskrewe aansoek by die kantoor van die Munisipale Bestuurder indien waarna verwys word in (a).
- (3) Die Munisipale Bestuurder sal die aansoek in die vorm van 'n item vir die Raad voorberei vir finale besluitneming, met inagneming van die volgende faktore:-
  - (a) Uitkoms van gemeenskapskonsultasie;
  - (b) Openbare belang en impak op die omgewing;
  - (c) Die risiko vir die omringende gemeenskap;
  - (d) Oorlas vir die omringende gemeenskap;
  - (e) Die moontlike voordele van verlengde drankhandelsure en dae op die omringende gemeenskap;
  - (f) Enige ander relevante faktor.

## 7. — VERPLIGTINGE OP DIE LISENSIEHOUER

### (1) — Vertoon van kennisgewings en sertifikate

- (a) 'n Lisensiehouer moet, tot die bevrediging van die gemagtigde amptenaar, verseker dat die volgende sertifikate prominent vertoon word binne die gelisensieerde perseel:
  - (i) Die sertifikaat uitgereik deur die Munisipaliteit wat die sonering of grondgebruik verklaar rakende die perseel vir die doel van hierdie verordening;
  - (ii) Die bevolkingsertifikaat rakende die perseel wat uitgereik is in terme van die Brandveiligheidsverordening van die Munisipaliteit;
  - (iii) Besigheidslisensie en/of sertifikaat uitgereik deur die Munisipaliteit.
- (b) 'n Lisensiehouer moet, tot die bevrediging van die gemagtigde amptenaar, verseker dat die volgende inligting prominent vertoon word in die voordeur of venster van die perseel in karakters nie kleiner nie as vyf sentimeter hoog:
  - (i) Die dranklisensienommer waaronder drank verkoop mag word; en
  - (ii) Die ure waartydens drank verkoop mag word.

### (2) — Veiligheid en Sekuriteit

- (a) 'n Lisensiehouer moet nakoming van alle toepaslike wetgewing verseker.

(b) 'n Lisensiehouer moet verseker dat redelike en toereikende veiligheid en sekuriteitsmaatreëls in plek is vir die beskerming van klante deur onder andere, maar nie slegs nie, te verseker dat:

- (i) die stoor van goedere en toerusting en die toestand van die perseel of enige strukture daarop nie die lewens van klante binne die perseel bedreig nie; en
- (ii) daar genoegsame beligting buite die perseel is waar klante en personeel die gelisensieerde perseel binnekom en verlaat.

### 8. — NAKOMING EN TOEPASSING

(1) 'n Gemagtigde Amptenaar mag, in die uitvoering van sy of haar pligte in terme van hierdie verordening of die Wet, te alle redelike tye die volgende persele binnegaan—

- (a) enige gelisensieerde perseel;
- (b) enige perseel waar 'n dranklisensie-aansoek hangende is;
- (c) enige perseel waar hy of sy redelike gronde het om te vermoed dat drank verkoop word strydig met die bepalings van hierdie verordening of die Wet; en enige ondersoek, navrae of inspeksies uitvoer soos wat hy of sy nodig mag ag.

(2) Wanneer 'n perseel in terme van hierdie artikel binnegegaan word, moet die gemagtigde amptenaar op versoek homself of haarself identifiseer aan die persoon in bevel van die perseel.

(3) 'n Gemagtigde amptenaar mag 'n kennisgewing van nie-voldoening uitreik en dien op die lisensiehouer of enige persoon in beheer van die gelisensieerde perseel, en 'n beroep doen op hierdie persoon om die bepalings van hierdie verordening, 'n voorwaarde van die lisensie of die Wet binne 'n spesifieke maar redelike tydperk na te kom.

(4) 'n Voldoeningskennisgewing moet die volgende stipuleer—

- (a) die bepalings van die verordening, lisensievoorwaarde of die Wet wat nagekom moet word;
- (b) die handeling of nalating wat op nie-voldoening neerkom;
- (c) die maatreëls wat getref moet word om voldoening te verseker;
- (d) die datum of tyd waarteen voldoening bereik moet word, waar toepaslik;
- (e) die moontlike gevolge van nie-voldoening.

(5) 'n Gemagtigde beampte mag 'n boete opleë aan die lisensiehouer of enige persoon in beheer van gelisensieerde persele soos voorsien in die boete-lys van hierdie verordening of die Wet.

### 9. — APPÈL

'n Persoon of juridiese entiteit wie se regte geraak word deur 'n besluit van die Munisipaliteit in terme van gedelegeerde magte mag appelleer teen die besluit deur aan die Munisipale Bestuurder binne 21 dae van die kennisgewing van die besluit skriftelike kennis te gee van die appèl en die redes daarvoor in terme van artikel 62 van die Plaaslike Regering: Munisipale Stelselwet, 2000 (Wet 32 van 2000).

**10 OORTREDING EN STRAF**

~~'n~~ Lisensiehouer wat die volgende oortree of nie daaraan voldoen nie -

- ~~(1) Bepaling van hierdie verordening;~~
- ~~(2) Voorwaarde of instruksie rakende hierdie verordening; of~~
- ~~(3) Kennisgewing van 'n gemagtigde beampte,~~

sal skuldig wees aan 'n oortreding en is strafbaar om 'n boete te betaal soos vasgestel deur die Landdroshof of gemagtig volgens die boete-lys van tyd tot tyd deur die Landdros in die gebied, of die boete-lys ingevolge die Wet, wat ook al toepaslik is op die betrokke tyd, of tot tronkstraf soos bepaal deur 'n Hof, of albei, of enige straf wat die Hof toepaslik mag vind onder die omstandighede.

**11 OORGANGSBEPALINGS**

Die handelsure rakende enige lisensie vir 'n perseel waar drank-verkoop mag word vir binneverbruik of buiteverbruik of beide binne- en buiteverbruik, wat uitgereik is voor die aanvang van hierdie verordening, sal vervang word deur die bepalinge van hierdie verordening van die datum van publikasie van hierdie verordening.

**12 KORT TITEL**

Hierdie verordening is genaamd die "Stellenbosch Verordening op Drankhandeldure" en word van krag sodra dit in die Provinsiale Gazette gepubliseer is.

**SKEDULE**

Handelsure vir die verkoop van drank op gelisensieerde persele ingevolge die sertifikaat voorsien in 4(1)(a)(i) en (ii) is:

LIGGING-KATEGORIE & GELISENSIEERDE PERSEEL-TIPE (sonering)	MAKSIMUM TOEGELATE HANDELSURE
<b>1. RESIDENSIËLE GEBIED</b>	
(a) Gasteakkommodasie-instansie / Gastehuis	Maandae – Saterdag van 11.00 tot 24.00 Sondag van 11.00 tot 21.00 met inbegrip van Artikel 4 hierbo- waar van toepassing.
(b) Besigheidsperseel/Spesifieke besigheid	
(c) Vermaaklikheidsplek/Ontspanningsplek/ Vergaderplek	
(d) Sport- en gemeenskapsklub uitsluitend- spesiale geleentede waar 'n tydelike lisensie- vereis word	
(e) Hotel / Restaurant / Funksie-lokaal	
<b>2. PLAASLIKE OF BUURTBSIGHEID</b>	
(a) Gastehuis / Gasteakkommodasie- instansie	11.00 tot 24.00 met inbegrip van Artikel 4 hierbo- waar van toepassing.
(b) Besigheidsperseel/Spesifieke besigheid/ Vergaderplek,	
(c) Vermaaklikheidsplek/Ontspanningsplek	
(d) Sport- en gemeenskapsklub uitsluitend- spesiale geleentheid waar 'n tydelike lisensie- vereis word	
(e) Hotel / Restaurant / Funksie-lokaal	
<b>3. ALGEMENE SAKEGEBIED</b>	
(a) Algemene sakegebied insluitend gemengde- gebruiksgebiede	Maandag – Saterdag van 10.00 tot 02.00 die- volgende dag  Sondag van 10.00 tot 24.00  Met inbegrip van Artikel 4 hierbo- waar van- toepassing.
(b) Gastehuis / Gasteakkommodasie- instansie	
(c) Besigheidsperseel / Spesifieke besigheid	
(d) Vermaaklikheidsplek/ Ontspanningsplek/Vergaderplek	
(e) Sport- en gemeenskapsklub uitsluitende- spesiale geleentede (vereis tydelike lisensie)	
(f) Hotel / Restaurant / Funksie-lokaal	
<b>4. INDUSTRIËLE GEBIED</b>	
(a) Industriële gebied insluitend gemengde- gebruiksgebied	
(b) Besigheidsperseel/ Spesifieke besigheid	

(c) Vermaaklikheidsplek/ Ontspanningsplek/Vergaderplek	Maandag—Saterdag van 10.00 tot 02.00 die volgende eeggend
(d) Sport- en gemeenskapsklub uitsluitend spesiale geleentheid waar 'n tydelike lisensie- vereis word	Sondag van 11.00 tot 21.00
<b>5. LANBOUGEBIED/LANDELIKE GEBIED</b>	
(a) Gasteakkommodasie instansie	11.00 tot 02.00 die volgende dag met inbegrip van Artikel 4 en/of Artikel 5(2) hierbo waar van toepassing.
(b) Besigheidspersoneel/Spesifieke besigheid/Vergaderplekke	
(c) Vermaaklikheidsplek/Ontspanningsplek	
(d) Sport- en gemeenskapsklub uitsluitend spesiale geleentheid waar 'n tydelike lisensie- vereis word	
(e) Wynmakery/Wynbedryf	
(f) Hotel / Restaurant / Funksie-lokaal	
<b>6. ANDER AD-HOC LIGGINGS</b>	
Spesiale geleentheid of tydelik gelisensieerde persele	Aansoek vir afwyking van die voorgeskrewe tye. Soos bepaal deur spesiale aansoek vir afwyking.

**Nota : Bepaling van toepaslike liggingskategorie van aansoek**

Waar die liggingskategorie soos hierbo uiteengesit onduidelik is of in dispuut is of moeilik is om te bepaal, of in gebiede wat nie homogeen gesoneer is nie (bv. 'n perseel met besigheidsonering in die middel van 'n residensiële gebied), sal die werklike sonering, vergunningsgebruik of afwykingsregte van die betrokke gelisensieerde perseel voorkeur geniet ten einde die kategorie te bepaal, in terme van Artikel 6(1)(a)(i) hierbo.

# APPENDIX 2



## STELLENBOSCH MUNICIPALITY

### LIQUOR TRADING HOURS BY-LAW

To provide for days on which and hours during which liquor may be sold by licensees and for matters related thereto.

#### **PREAMBLE**

Stellenbosch Municipality, by virtue of the powers vested in it by **section 156 (2)** of the **Constitution of the Republic of South Africa** as amended, read with **section 13** of the **Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)**, herewith publish the By-law set out below.

In this by-law, words used in the masculine gender include the feminine. All singular meanings shall include the plural interpretation and vice versa.

The English text shall prevail in the event of an inconsistency between the different texts, unless the context otherwise indicates.

#### **INDEX**

1. Definitions
2. Application
3. General prohibition
4. Trading days and hours for sale and consumption of liquor on licensed premises
5. Trading days and hours for sale and consumption of liquor off licensed premises
6. Display of licenses, certificates and information
7. Compliance and enforcement
8. Offences and penalties
9. Vicarious responsibility
10. Transitional provisions
11. Short title  
Schedule



## 1. DEFINITIONS

In this by-law unless the context otherwise indicates –

**“Act”** means the **Western Cape Liquor Act, 2008 (Act No 4 of 2008)**

**“agricultural area”** means an area predominantly zoned for agriculture or any other equivalent such as a small holding, zoning with the purpose of promoting and protecting agricultural activity on a farm as an important economic, environmental and cultural resources, where limited provision is made for non-agricultural uses to provide owners with an opportunity to increase the economic potential of their properties, without causing a significant negative impact on the primary agricultural resources;

**“authorised official”** means a law enforcement officer appointed by the Municipality, and/or a member of the South African Police Service.

**“Council”** means the Municipal Council of Stellenbosch Municipality.

**“guest accommodation establishment”** means premises used as temporary residential accommodation, and includes but not limited to the provision of meals for transient guests for compensation, also including backpackers' lodges, a bed-and-breakfast establishment, guest farm or lodge(s), as well as facilities for business meetings, conferences, events or training sessions of resident guests, but excludes a hotel;

**“guesthouse”** (gastehuis) means a commercial residential establishment of 15 or less bedrooms, accommodating no more than 30 guests at a time, for compensation, which:-

- (a) Primary source of business and purpose is the supply of tourist accommodation, meals and beverages (which may include liquor) for transient guests;
- (b) May include facilities for business meetings or training sessions of guests on the property;
- (c) A wellness center and conference facility for transient guests with necessary consent of Council limited to service of guests only; and
- (d) May consist of one or a group of buildings which are designed as a harmonious architectural entity.

**“hotel”** (hotel) is a commercial residential establishment of 16 or more bedrooms, accommodating more than 30 guests at a time, for compensation, and may include:-

- (a) A restaurant or restaurants forming part of the hotel;
- (b) Conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel;
- (c) Premises which are licensed to sell liquor for consumption on or off the property together with or without meals to guests and/or the public;
- (d) May consist of one or a group of buildings which are designed as a harmonious architectural entity;

but excludes a backpacker’s lodge, a bed-and-breakfast establishment, guesthouse, guest farm or lodge(s), as well as facilities for business meetings, conferences, events or training sessions of resident guests of on-consumption facilities.

**“Industrial area”** means an area predominantly zoned general industry or any other equivalent zoning, with the purpose to accommodate all forms of industry including manufacturing and related processing, but excludes noxious or hazardous risk activity;

**“license”** means a license referred to in section 33 of the Act and reference to “license” includes “temporary license”<sup>1</sup>;

**“internet sales”** means the sale of liquor to a purchaser who does not attend the licensed premises from which the liquor is sold but instead orders the delivery of liquor electronically through e-mail, internet websites, interactive digital TV or like manner and such sales will be deemed to occur at the time of delivery of the ordered liquor to the purchaser.

**“licensee”** means the person to whom a liquor license has been issued in terms of the Act;

<sup>1</sup> Section 33 of the Act provides for the following categories of licenses –

- (a) a license for the micro-manufacture and sale of liquor for consumption both on and off the premises where the liquor is sold;
- (b) a license for the sale of liquor for consumption on the premises where the liquor is sold;
- (c) a license for the sale of liquor for consumption off the premises where the liquor is sold;
- (d) in exceptional circumstances, a license for the sale of liquor for consumption both on and off the premises where the liquor is sold;
- (e) a license for the sale of liquor for consumption on or off the premises upon which liquor is sold at special events; and
- (f) a temporary liquor license for the sale of liquor for consumption on or off the premises upon which liquor is sold.

**“licensed premises”** means the premises specified in the liquor license or certificate or temporary license issued in terms the Act;

**“liquor”** means any liquid or substance which contains or is intended to contain more than 1% of alcohol by volume or mass, but excluding—

- (a) methylated spirits;
- (b) medicine which is subject to registration in terms of the Medicines and Related Substances Act, 1965 (Act 101 of 1965); and/or
- (c) products which are not intended for human consumption

**“liquor authority”** means the Western Cape Liquor Authority established by section 2(1) of the Act;

**“manufacture”** means to produce or bottle liquor with the intention of selling it;

**“Municipality”** means Stellenbosch Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), published in Provincial Notice 5643 dated 4 December 2000 and includes any political office-bearer, councilor, or any employee acting in terms of delegated or sub-delegated authority;

**“person”** includes –

- (a) any organ of state;
- (b) any company or close corporation incorporated or registered as such under any law;
- (c) any body of persons corporate or unincorporated; and
- (d) any trust;

**“premises”** means a place, land, building, part of a building, vehicle or vessel which is mainly used for the conveyance of tourists;

**“residential area”** means an area, predominantly zoned informal, single or general residential or any equivalent zoning, with the purpose to predominantly house single family dwelling houses in low to medium density neighbourhoods, as well as higher density living accommodation and which includes controlled opportunities for home employment, additional dwellings

and low intensity mixed use development;

**“room service facility”** means a mini bar or self-help facility for the consumption of liquor in guest rooms or a hotel room, and includes a call-up service for resident guests;

**“sell”** includes supply, exchange, offer for sale, display for the purpose of sale or authorise, direct or allow a sale, supply, exchange, offer for sale or display for sale and “sale” and “sold” have corresponding meanings;

**“sparkling wine”** means an effervescent wine resulting from the fermentation of grapes, whether by natural or artificial process, and includes Champagne;

**“supply”** means to place a person in possession or control thereof;

**“temporary license”** means a temporary license referred to in section 48 of the Act;

**“the Act”** means the Western Cape Liquor Act 4 of 2008, as amended;

**“trading days”** means the days on which liquor may be sold during trading hours;

**“trading hours”** means the hours during which liquor may be sold on trading days;

**“wine”** means wine as defined in Section 1 of the Liquor Products Act 60 of 1989;

## **2. APPLICATION**

This By-law applies to all licensees that sell liquor within the area of jurisdiction of the Municipality.

## **3. GENERAL PROHIBITION**

No licensee may sell liquor outside of the hours permitted in terms of this By-law.

## **4. TRADING DAYS AND HOURS FOR SALE AND CONSUMPTION OF LIQUOR ON LICENSED PREMISES**

- (1) A licensee may sell liquor for consumption on the licensed premises on the following days and hours:
  - (a) On any day; and
  - (b) during the hours of trade as set out in the Schedule.
- (2) A licensee may not allow the consumption of liquor on the licensed premises more than 30 minutes after the time set out in the Schedule as the time at which the sale of liquor is to cease.
- (3) Despite subsection (1), a hotel or guest accommodation establishment or guest house licensed to sell liquor may offer a room service facility at any time of the day on any day.
- (4) Despite subsection (1), a licensee may sell sparkling wine outside of the hours of trade set out in the Schedule from 08:00 on any day provided it is sold with a meal.
- (5) Despite subsection (1) a licensee, licensed to manufacture liquor, may operate a tasting facility to offer the sampling of liquor manufactured on the licensed premises on the following days and hours:
  - (a) On any day; and
  - (b) from 08:00 and until the time set out in the Schedule as the time at which the sale of liquor is to cease.

#### **5. TRADING DAYS AND HOURS FOR SALE OF LIQUOR OFF LICENSED PREMISES INCLUDING INTERNET SALES**

- (1) A licensee may sell liquor for consumption off the licensed premises on the following days and hours:-
  - (a) Monday to Saturday from 09:00 – 20:00
  - (b) Sunday from 09:00-16:00.
- (2) Despite the provisions of subsection (1) a licensee, licensed to manufacture liquor, may sell liquor manufactured on the licensed premises on the following days and hours:-
  - (a) Monday to Saturday from 08:00 – 20:00

(b) Sunday from 09:00-18:00

## **6. DISPLAY OF LICENSES, CERTIFICATES AND INFORMATION**

- (1) A licensee must, to the satisfaction of the authorised official, ensure that the following are prominently displayed inside the licensed premises:
  - (a) The liquor license issued to the licensee;
  - (b) The current renewal certificate alternatively proof of payment of renewal fee for current year;
  - (c) The certificate issued by the Municipality stating the zoning or land use in respect of the licensed premises;
  - (d) The business license and/or certificate issued by the Municipality to the licensee.
  
- (2) A licensee must, to the satisfaction of the authorised official, ensure that the following information is prominently displayed on the front door or window of the premises in characters not less than five centimeters in height:
  - (a) The liquor license number under which liquor may be sold; and
  - (b) The hours during which liquor may be sold.

## **7. COMPLIANCE AND ENFORCEMENT**

- (1) An authorised official –
  - (a) may at all reasonable times enter any licensed premises for purposes of monitoring compliance with this By-law;
  - (b) shall have the power to issue an admission of guilt fine or a compounding notice as provided for in terms of section 57(5)(a) or 341(5) of the Criminal Procedure Act 51 of 1977.
  
- (2) A person who hinders an authorised official in the execution of his or her duties commits an offence.

## **8. OFFENCES AND PENALTIES**

- (1) A person who contravenes any provision of this By-law commits an

offence.

- (2) A licensee who commits an offence referred to in subsection (1) is, on conviction, liable for a fine as the court may deem fit to impose or to a term of imprisonment, or both such fine or imprisonment.
- (3) Any person who commits a continuing offence shall be guilty of an offence for each day during which that person fails to comply with this By-law.
- (4) A court convicting a person of an offence under this By-law may impose alternative sentencing in place of a fine or imprisonment.

#### **9. VICARIOUS RESPONSIBILITY**

- (1) If an agent or employee of a licensee does or omits to do anything, which, if it were done or omitted by the licensee, would be an offence in terms of this By-law, the licensee is deemed to have done or omitted to do that act, except where-
  - a. the licensee neither connived at, permitted or allowed the act or omission;
  - b. the licensee took such steps as he or she was reasonably able to take in order to prevent the act or omission; and
  - c. the act or omission did not fall within the scope of the employment or authority of the manager, agent or employee.
- (2) The fact that a licensee has issued instruction prohibiting an act or omission is not in itself sufficient to prove that he or she took the steps required by subsection 1(b).

#### **10. TRANSITIONAL PROVISIONS**

The trading hours in respect of any license for premises upon which liquor may be sold for consumption either on or off the licensed premises, or both on and off licensed premises, issued prior to the commencement of this By-law will be replaced by the provisions of this By-law from the date of publication of this By-law.

#### **11. SHORT TITLE**

This By-law is called the "Stellenbosch Liquor Trading Hours By-Law" and





**SCHEDULE****TRADING HOURS FOR ON CONSUMPTION LICENSED PREMISES:**

LAND USE / ZONING TYPE (as determined by zoning certificate)	MAXIMUM PERMITTED TRADING HOURS
<b>1. Residential area</b>	Monday – Saturday from 11:00 to 00:00 Sunday from 11:00 to 21:00
<b>2. Local or neighborhood business</b>	11:00 to 00:00
<b>3. Central business district</b>	Monday – Saturday from 10:00 to 02:00 Sunday from 10:00 to 02:00
<b>4. Industrial area (Including mixed use area)</b>	Monday – Saturday from 10:00 to 02:00 Sunday from 11:00 to 02:00
<b>5. Agricultural area / Rural area</b>	11:00 to 02:00
<b>6. Other ad hoc locations</b>	
Special events	10:00 – 02:00 or as determined by event permit whichever is more restrictive
Vehicle or vessel mainly used for the conveyance of tourists	11:00 – 02:00

# APPENDIX 3

## Stellenbosch Municipality

**STELLENBOSCH MUNICIPALITY LIQUOR TRADING HOURS BY-LAW 2017****ADMISSION OF GUILT FINES**

The following Admission of Guilt fines for the enforcement of the Stellenbosch Municipality Liquor Trading Hours By-law 2017 are approved in terms of Section 57(5)(a) and 341(5) of the Criminal Procedure Act 51 of 1977 for the magisterial district of Stellenbosch.

<b>SECTION</b>	<b>OFFENCE</b>	<b>FINE</b>
section 3 read with section 8(1).	Selling liquor outside of permitted hours.	R5 000.00
section 6(1)(a) read with section 8(1).	Failing to display liquor license.	R500
section 6(1)(b) read with section 8(1).	Failing to display the current renewal certificate alternatively proof of payment of renewal fee for current year.	R500
section 6(1)(c) read with section 8(1).	Failing to display the certificate issued by the Municipality stating the zoning or land use in respect of the licensed premises.	R500

section 6(1)(d) read with section 8(1).	Failing to display the business license and/or certificate issued by the Municipality to the licensee.	R500
section 6(2)(a) read with section 8(1).	Failing to display the liquor license number under which liquor may be sold.	R500
section 6(2)(b) read with section 8(1).	Failing to display the hours during which liquor may be sold.	R500
section 7(2).	Hindering an authorised official in the execution of his or her duties.	R1500

I hereby certify that the admission of guilt fines listed above as submitted by the Municipality of Stellenbosch have been approved by me in terms of section 57(5)(a) and 341(5) of the Criminal Procedure Act, 51 of 1877, for the magisterial district of Stellenbosch. This determination replaces any previous determination for the said magisterial district.

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Magistrate