

Streets and Public Places and the Prevention of Nuisances Amendment

S22 Enforcement & City May Act and Recover Costs

1) Inspections

An authorized official, in relation to any premises or business:

to determine whether the provisions of this By-Law are being complied with or, where there are reasonable grounds for believing that a provision of this By-law has been contravened or, where there has been an allegation that a provision of this By-law has been contravened, at all reasonable times, may –

- (a) enter such premises or business,
- (b) inspect the premises or any vehicle that is used or that they reasonably suspect is being used for the business and anything on the premises or anything in the vehicle; and
- (c) question any person on the premises or in the vehicle or any person who has recently been on the premises or in the vehicle.

2) Instruction to leave

- (1) An authorised official may instruct a person who is in contravention of this By-Law to leave and remain out of an area where a contravention of the By-law has commenced, or is taking place or where an authorized officer is taking measures to counter such unlawful activity
- (2) Unless it is reasonable and justifiable to not do so, before issuing the instruction, the authorised official must give the person an opportunity to provide reasons why they should not be instructed to leave and remain out of an area where a contravention of the By-law is occurring or where an authorized officer is taking measures to counter such unlawful activity
- (3) A person who fails to immediately comply with such an instruction is guilty of an offence.

3) Compliance notice

- (1) The City may serve a written notice on a person if there are reasonable grounds for believing that the person is in contravention of this By-Law or where there has been an allegation that the person has contravened a provision of this By-law
- (2) The notice must –
 - (a) describe the conduct constituting a contravention of this By-Law;
 - (b) indicate which provision of this By-Law, condition of approval or other provision the conduct contravenes;
 - (c) if relevant, state that the unlawful conduct constitutes an offence and;
 - (d) instruct the person to cease the unlawful conduct and to comply with this By-Law, condition of approval or other provision immediately or within a time period determined by the City, and where relevant must specify the steps to be taken to comply;
 - (e) state that a failure to comply with the notice constitutes a further offence
 - (f) state that, in the event of non-compliance with the notice, the City may take one or more of the following measures –
 - (i) issue the person with a fine for not complying with the compliance notice;
 - (ii) take steps contemplated in the terms specified in the notice;
 - (iii) apply to a competent court for appropriate relief including the costs of the application; and
 - (iv) institute a criminal prosecution.
- (3) The compliance notice may –
 - (a) Instruct the person within a specified time to, in writing, inform the City what steps have been taken to comply with the notice.
 - (b) Instruct a person at their cost to take specified action to the satisfaction of the City within a specified time to –
 - (i) cease, modify or control an activity contemplated in this by-law causing or contributing to a contravention of this by-law,

- (ii) investigate, evaluate and assess the impact of a specific situation or activity and report thereon;
 - (iii) undertake and complete specific measures;
 - (iv) eliminate or remove an impact or activity leading to a contravention of this by-law
 - (v) rehabilitate the affected area
- (4) Should the person on whom a compliance notice was issued, fail to comply, or inadequately comply, with the compliance notice, then the City may take measures that the City considers appropriate to remedy the situation and may authorise another person to take such measures.
- (5) The City may recover costs to the City, or an authorised person for the measures to be undertaken under subsection four (4) and all costs incurred as a result of acting under subsection (4), from any or all of the persons on whom the compliance notice was issued.
- (6) The costs contemplated in subsection (5) may be recovered by the City in terms of its Credit Control and Debt Collection Policy and the Credit Control and debt Collection By-law 2006 or similar legislation.

4) Powers and functions of authorised officials

- (1) In this section, unless the context indicates otherwise, '**article**' means anything, including a structure, object, document, book, record or electronic information or extract, part or sample therefrom reasonably required for enforcing any provision of this By-law.
- (2) Without a warrant, an officer may stop, enter and search any vessel, vehicle, premises or person for a prima facie offence in terms of this By-law occurring in his/her presence.
- (3) Without a warrant, an officer may stop, enter and search any vessel, vehicle, premises or person if the officer has reasonable grounds to believe that an offence in terms of this By-Law has been or is being committed on or in such vessel, vehicle or premises, if,
- (a) the person in control of the vehicle or premises consents to such stop, entry, search or seizure; or

- (b) the official has reasonable grounds to believe that a warrant will be issued, if the officer applied for it, and the delay caused by the obtaining of such a warrant would defeat the object of the stop, entry, search or seizure:

- (4) A judge in chambers may issue a warrant contemplated in this subsection on written application by an officer if it appears from information under oath or affirmation that –
 - (a) there are reasonable grounds for believing that a contravention of this By-Law has occurred;
 - (b) the search and seizure is likely to yield information pertaining to the contravention; and
 - (c) the search and seizure is reasonably necessary for the purposes of this By-Law.

- (5) In enforcing or investigating compliance with this By-Law, an authorised official may –
 - (a) be accompanied by an interpreter, a police official or any other person who may be able to assist with the inspection;
 - (b) inspect any article which may be relevant to the investigation;
 - (c) examine, analyse, measure or make a copy of an article and remove it for examination, analysis, measurement, copying or extraction;
 - (d) require a person to produce or to deliver at such time and place as may be determined by the officer, an article for inspection;
 - (e) take a photograph or make an audio-visual recording of any person or anything for his or her investigation;
 - (f) question a person who, in the opinion of the officer, may be able to furnish information on a matter to which this By-Law relates;
 - (g) direct a person to appear before him or her at such time and place as may be determined by the officer and question such person either alone or in the presence of any other person on a matter to which this By-Law relates; and
 - (h) seize an article –

- (i) which is concerned in or is on reasonable grounds believed to be concerned in an offence in terms of this By-Law;
 - (ii) which may afford evidence of an offence in terms of this By-Law;
or
 - (iii) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence in terms of this By-Law.
- (6) A person who so requests may, if possible, make a copy of an article to be removed or seized in terms of this section.
- (7) When an authorised official removes or seizes an article, the officer must issue a receipt to the owner or person in control thereof' and if possible, return the article as soon as practicable after achieving the purpose for which the article was removed or seized.
- (8) An officer may without a warrant arrest any person who is on reasonable grounds believed to have committed an offence in terms of this By-law if the arrest is reasonably necessary for the purposes of this By-law
- (9) An officer must exercise their powers and functions with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

5 Impounding of Items, goods, equipment, vessels or vehicles

- (1) The City may determine an impoundment fee and designate a pound contemplated in this section.
- (2) An officer may, without a warrant, seize and impound any property, including but not limited to, an item, goods, equipment, vessel or a vehicle which is concerned or is on reasonable grounds believed to be concerned with the commission of an offence in terms of this By-Law.
- (3) The officer, at the time of the impoundment, must give the holder of the impounded item, goods, equipment, vessel or vehicle, a notice setting out –
- (a) the reason for the impoundment;
 - (b) a description of the impounded item, goods, equipment, vessel or vehicle;
 - (c) the address and contact details of the pound;

- (d) the impoundment fee; and
 - (e) a warning that the impounded item, goods, equipment, vessel or vehicle may be sold to recover the impoundment fee and any fine, costs or damages.
- (4) The officer must cause an impounded item, goods, equipment, vessel or vehicle to be taken to a designated pound where it must be retained and dealt with in terms of this section.
- (5) The City must release the impounded item, goods, equipment, vessel or vehicle to the owner upon presentation of proof of ownership if, in relation to the offence contemplated in subsection (2) –
- (a) a criminal charge is not laid,
 - (b) a fine is not issued or
 - (c) a notice of intention to prosecute is not issued within 72 hours of the impoundment; or
 - (d) the criminal case against all accused persons is disposed of because –
 - (i) the accused persons are acquitted; or
 - (ii) the accused persons are convicted and either the impoundment fee and any fine, costs, tariffs and damages are paid.
- (6) An impounded item, goods, equipment, vessel or vehicle is forfeited to the City and the City becomes the lawful owner of such impounded item, goods, equipment, vessel or vehicle if -
- (a) a court orders such forfeiture; or
 - (b) the person/s who lawful owned the item, goods, equipment, vessel or vehicle cannot be determined within the period defined and publicized by the City for the relevant category for such impoundment after reasonable efforts to determine the owner have not been successful; or
 - (c) the person/s who lawful owned the item, goods, equipment, vessel or vehicle lawful owner has failed to take the steps required in Subsection 5(d)(ii) for the release of the equipment, vessel or vehicle and is not undertaken within such time as the City may determine, and

if no appeal has been lodged at the expiry of the time limit for an appeal.

- (7) The City may, as per subsection 6, amongst others, sell, donate or dispose of an impounded item, goods, equipment, vessel or vehicle.
- (8) Any net proceeds from the sale of an impounded item, goods, equipment, vessel or vehicle must be applied as follows and in this order:
 - (a) the recovery of costs incurred by the City during forfeiture and impoundment;
 - (b) the payment of the impoundment fee, and any fine, costs or damages in relation to an offence contemplated in subsection (2); and thereafter
 - (c) balance of the proceeds returned to the person who lawfully owned the item. animal, equipment, vessel or vehicle at the time of the impoundment.
 - (d) If the person who lawfully owned the impounded item, goods, equipment vessel or vehicle does not claim the proceeds derived from such sale within 1 (one) month from the date of the sale, then the proceeds will be forfeited to the City.
- (9) Perishable goods that have been impounded may, at any time after the impoundment, be sold or otherwise disposed of by the City. The City may destroy the goods if the condition of those goods renders them unfit for human consumption.