

MAKHADO MUNICIPALITY

DRAFT PUBLIC HEALTH: FUMIGATION BY-LAWS

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Schedules

1. Definitions

For the purpose of these by-laws, unless the context otherwise indicates –
“**fumigation**” means fumigation with hydrogen cyanide (hydro-cyanic acid gas), or other similar substance dangerous to human life, of any building or premises or part thereof, and “fumigate” has a like meaning;

“**fumigant**” means hydrogen cyanide (hydro-cyanic acid gas), or other similar substance of sufficient strength to kill vermin;

“**fumigator**” means a person in charge of the carrying out of fumigation and who is duly licensed under these By-laws to carry on the work or trade of fumigation;

“**fumigation area**” means the building of premises or part thereof undergoing fumigation;

“**risk area**” means any part of a building or premises into which there is reason to apprehend that the fumigant may penetrate from the fumigation area, and includes –

- (i) those parts of any building or premises which are both less than 20 metres measured horizontally from the nearest boundary of the fumigation area and not separated entirely from the fumigation area by any yard, street or other space open to the area, of not less than 17 metres in width; and
- (ii) all rooms immediately above or below the fumigation area and the area set out in the preceding paragraph;
- (iii) the fumigation area.

2. Principles and objectives

The Makhado Municipal Council, acting under the Constitution and within the framework of national legislation such as environmental and health legislation, and –

- (a) taking into account the historic inequalities in the management and regulation of activities that may have an adverse impact on public health and that the need exists to redress these inequalities in an equitable and non-discriminatory manner;
- (b) realising the need to adopt a long-term perspective that takes into account the interests of future generations; and
- (c) accepting its duty to improve and develop, where possible, public health in the Makhado municipal area,

accepts its duties as custodian of the environment, and thus aims to –

- (i) ensure that every person in its area has the right to health and an environment that is not detrimental to their well-being;
- (ii) ensure that, within its capacity, financial and otherwise, a healthy and safe environment for all the residents are promoted and developed;
- (iii) eliminate where possible any source of a public health hazard and any risk by such hazard to its residents;
- (iv) inhibit the growth and spread of diseases;
- (v) prevent any public health hazard or nuisance
- (vi) prevent the infestation by pests;
- (vii) prevent the development and existence of unhygienic conditions;
- (viii) minimise adverse effects that may arise through the human being's use of the environment, on living organisms and ecosystems; and
- (ix) protect and promote the long term health and well-being of all its residents;
- (x) to provide an effective legal and administrative framework which enables the Council to regulate and manage, in an open and responsible manner and in accordance with the principles of these by-laws all activities and matters relating to the fumigation of premises.

3. Application of by-laws

These by-laws apply to any fumigation of any building of part hereof on any premises or part hereof within the jurisdiction of the Makhado Municipality, but do not apply to a fumigation carried out –

- (a) exclusively for agricultural or horticultural purposes of an agricultural or horticultural building no part of which is used for human habitation;
- (b) in any building, or part of a building, which building or part of a building has been specially constructed or adapted for the purpose of effecting the fumigation of any articles.

4. Legislative framework

These By-laws fall within the legislative framework of the –

- (a) Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (b) Promotion of administrative Justice Act, 2000 (Act No. 3 of 2000);
and
- (c) Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

5. Requirements for grant of licence

The Council shall not grant a licence to a person to carry on the work of trade of fumigation until the person has satisfied the Council that he or she is –

- (a) fully competent to undertake, and fully conversant with the dangerous nature of fumigation and the measures to be taken to prevent poisoning from material used;

- (b) capable of rendering first aid, artificial respiration and of administering the approved antidotes and remedies applied to cyanide poisoning;
- (c) thoroughly conversant with these By-laws;
- (d) physically fit for the purposes of undertaking fumigation;
- (e) of good character and reliable;
- (f) not less than twenty-one years of age;
- (g) able to produce proof of having worked for at least six months under a licensed fumigator;
- (h) in possession of an efficient gas-mask of a type approved by the Council, and a first-aid outfit as specified in Schedule 1 to these By-laws, both in good working order, and fully conversant with their use; and
- (i) in possession of adequate facilities for the safe storage of his or her fumigant and its constituents.

6. Notice of fumigation

- (1) A fumigator must deliver by hand at least 24 hours before fumigation is undertaken a notice in writing of his or her intention to fumigate any premises –
 - (a) To the Public Health Management Inspector; and
 - (b) To each and every occupier personally of the premises in the risk area.
- (2) Such notice must in each case specify the –
 - (i) fumigation and risk areas;
 - (ii) date and hour at which fumigation will be commenced; and
 - (iii) name of fumigator.
- (3) A fumigator may not commence the fumigation of any premises later than one hour after the time specified in the written notice, and

if he or she fails to commence the fumigation within the specified time, he or she must postpone the fumigation and give fresh notice as required by this section.

- (4) A person who contravenes subsection (1) or subsection (3) or who enters wrong of false information in the notice contemplated in subsection (2) commits an offence.

7. Prohibition against fumigation on certain days and at certain times

- (1) No fumigator may, without the permission in writing of the Public Health Management Inspector –
- (a) fumigate any premises on a Saturday, Sunday or public holiday;
 - (b) start to generate cyanide gas in any premises for fumigation purposes before 7 a.m. or after 12 noon; or
 - (c) Permit the process of fumigation to continue after 4 o'clock p.m., and he or she may not later than 4 o'clock open the doors and windows of the risk area of the premises for the purposes of ventilation.
- (2) A person who contravenes subsection (1) commits an offence.

8. Fumigation Staff

- (1) No fumigation may be carried out except by adequate fumigating staff that may in no case consist of less than two persons, one of whom must be licensed under these by-laws.
- (2) Any person employed as an assistant to fumigator must be –

- (a) over the age of 18 years;
 - (b) physically fit; and
 - (c) conversant with the use of a gas-mask and competent in rendering first-aid as applied to cyanide poisoning.
- (3) No fumigator may employ upon the actual work of fumigation any person as an assistant who does not comply with the requirements of sub-section (2) and no person who does not so comply may undertake any such work.
- (4) A person who contravenes subsection (1) or subsection (2) or subsection (3) commits an offence.

9. Member of staff to remain in attendance

- (1) The fumigator is responsible for seeing that the premises are adequately guarded to prevent the entrance of any unauthorised person, by at least one member of the fumigating staff, who must remain in attendance from the commencement of the fumigation until the risk has been certified by the fumigator to be free from danger in terms of section 15.
- (2) A fumigator who contravenes subsection (1) commits an offence.

10. Precautions to be taken before liberation of fumigant

- (1) No fumigant may be liberated until –
- (a) all persons other than the fumigating staff have left the risk area and for the purpose of paragraphs (a), (b), (c), (d) and (e), an exhaustive search has been carried out by the fumigator;

- (b) the occupier has removed all domestic pets, and all liquids of foodstuffs of such a kind or so stored as to be liable to absorb the fumigant, have been removed from the fumigation area;
- (c) all water contained in cisterns, tanks or otherwise in the fumigation area which may become contaminated by the fumigant has, where possible, been run off;
- (d) all fires and naked lights in the fumigation area have been extinguished;
- (e) every door or other means of access to the risk area has been securely fastened so as to prevent access thereto and possession has been taken of any key thereof by the fumigator,
- (f) all cracks, crevices or openings in or between walls or between walls and ceilings or roofs or floors or in windows or ventilators and all fireplaces in the fumigation area including windows and doors giving access thereto have been efficiently caulked or closed in such a manner as to prevent the escape of the fumigant there from;
- (g) notices have been securely and conspicuously placed so that they may be readily seen by any person approaching the risk area, which notices –
 - (i) must contain in such languages as Council may decide in block letters not less than 50 millimetres in height the words – “DANGER: POISON GAS: DO NOT ENTER”;
 - (ii) must bear in 12 millimetres block capital letters the name, address and telephone number (if any) of the fumigator carrying on the work of the fumigation;
 - (iii) must bear the universally known skull and cross-bones design; and
 - (iv) may not be removed until the fumigator has signed and delivered the certificate of safety as required in section 15 of these by-laws.

- (2) A person who fails to undertake a precaution as provided for in subsection (1) commits an offence.

11. Additional safety measures

- (1) No fumigator may undertake the fumigation –
 - (a) of any building or any portion thereof unless he or she has in readiness for immediate use an efficient gas-mask; and
 - (b) of any building of more than one storey unless he or she is accompanied by an assistant duly licensed under these by-laws.
- (2) A person who contravened subsection (1) commits an offence.

12. Application of fumigant

- (1) The fumigant may not be applied in such a manner as to be absorbed in liquid form by floors, walls, ceilings of household effects.
- (2) A person who applies a fumigant in contravention of subsection (1) commits an offence.

13. Entry of premises during and after fumigation

- (1) After the liberation of the fumigant has commenced and until the risk area is free from danger the fumigator must ensure that –
 - (a) any member of the fumigating staff entering any part of this area wear or carry ready for immediate use an efficient mask or other apparatus which affords complete protection to the wearer against the fumigant and carry or have in his or her

possession ready for immediate use an efficient electric torch;

- (b) the first-aid appliances and remedies set out in Schedule 1 to these by-laws are constantly available; and
- (c) the risk area and any buildings and open space adjacent hereto are kept under observation in order to ensure the discovery of any penetration of the fumigant into such building or open space and, in the event of any such penetration all steps which are reasonably practicable are taken to safe-guard the occupants thereof.

(2) A person who contravenes subsection (1) commits an offence.

14. Re-entry of risk area

(1) No person other than the fumigator or a member of his or her staff may enter or be permitted by the fumigator or his or her staff to enter the risk area –

- (a) while there is a dangerous concentration of the fumigant in the fumigation area; and
- (b) until the risk area has been ventilated in such manner and for such period as shall be effective to ensure that the area is free from danger.

(2) A person who contravenes subsection (1) commits an offence.

15. Re-entry of fumigation area

(1) No person other than the fumigator or a member of his or her staff may enter or be permitted by the fumigator or his or her staff to enter the fumigation area after commencement of fumigation until –

- (a) the fumigation area has been ventilated in such manner and for such period, which period may not be less than four hours, as is effective to ensure that the area is free from danger, and for this purpose all doors and windows must be kept open for a period of not less than two hours. However, if after such period of two hours the fumigator has satisfied himself or herself that all parts of the area can be entered with safety without wearing a gas-mask, other persons may be allowed in under his or her supervision to remove bedding, clothing, cushions and upholstered articles for the purpose of airing;
 - (b) the fumigator has established by personal and chemical tests that the fumigation area is free from danger, such chemical test to be the benzidine copper acetate test or other sufficient and recognised test;
 - (c) a certificate, in the form contained in Schedule 2 to these by-laws, signed by the fumigator has been delivered to the owner or occupier of the premises in the fumigation area, however, no such certificate may be issued within a period of four hours after ventilation has been commenced;
 - (d) all empty containers and residues of the substances which have been used for fumigation have been removed or rendered innocuous by the fumigator; and
 - (e) all water contained in cisterns, tanks or otherwise in the fumigation area which may have become contaminated by the fumigant has been run off.
- (2) A person who contravenes subsection (1) commits an offence.

16. Precautions regarding residues and containers

- (1) No fumigator may fail upon completion of the fumigation –

- (a) to destroy or remove and dispose of all residues of the substances used for fumigation in such a way as to obviate any danger there from; and
 - (b) to render unfit for further use any empty containers other than the apparatus used for generating the gas.
- (2) A person who contravenes subsection (1) commits an offence.

17. Duties of owner and occupier of fumigated premises

- (1) No owner or occupier of any premises in the fumigation area may re-occupy or allow or permit it to be re-occupied such premises until the certificate of safety referred to in section 15 of these by-laws has been handed to him or her by the fumigator and until the time stated therein for re-occupation has arrived.
- (2) No owner or occupier to whom such certificate of safety has been handed may fail to remove from such premises, shake out and air for at least two hours before use all mattresses, bedding, blankets, pillows, clothing, cushions and upholstered articles likely to absorb the fumigant which have been exposed to the fumigant and such articles may not be returned to the fumigation area until they have been exposed to the open air outside the building for a period of at least two hours and the gas shaken or beaten from them.
- (3) The owner or occupier must keep fully open all windows and ventilators and maintain adequate cross ventilation in all rooms to be occupied for sleeping in for the duration of the following night.
- (4) The fumigator must endorse on every notice issued under subsection 6(1)(b) the terms of subsections (1), (2) and (3) of this subsection.
- (5) A person who contravenes subsection (1), subsection (2), subsection (3) or subsection (4) commits an offence.

18. Certain fumigants prohibited

- (1) No person may use or cause or permit to be used for the purpose of the deverminisation, disinfestation, or fumigation of any building, premises or part thereof, any petrol, carbon disulphide, ether preparation of material capable of emitting vapours which, with air, may form an explosive mixture.
- (2) For bed-bug destruction the minimum period for which a house may be exposed to hydrogen cyanide is five hours, and the minimum quantity that may be used is as follows:
 - (a) Sodium cyanide, 453,5 grams per 28 cub. metres of air space with sufficient quantity of diluted acid to liberate its full yield of hydro-cyanic acid gas;
 - (b) Liquid cyanide, 255,5 fluid grams per 28 cub. metres of air space; or
 - (c) Absorbed liquid cyanide, 180 grams of hydro-cyanic acid gas per 28 cub. metres of air space.
- (3) A person contravenes subsection (1) or subsection (2) commits an offence.

19. Register

- (1) Every fumigator must keep a register in which he or she must enter immediately following the completion of any fumigation the following particulars:
 - (a) Description and address of premises fumigated;
 - (b) Time and date at which fumigant was released;
 - (c) Time and date at which ventilation was started;
 - (d) Time and date at which risk area was declared free from danger; and
 - (e) Name of fumigator.

- (2) A person who contravenes (1) or who enters wrong or false information in the register commits an offence.

20. Inspection

- (1) The register and equipment, including gasmasks and first-aid appliances used by the fumigator must be open to inspection for any purpose connected with the carrying out of these by-laws at all reasonable times without previous notice by the Public Health Management Inspector or any other duly authorised servant of the Council.
- (2) A person who hinders or interferes with the performance of a function by the Public Health Management Inspector in terms of subsection (1) commits an offence.

21. Anti-rodent gassing operations

- (1) A gassing operation carried out with cyanide having a calcium base for the destruction of rodents in any building may not be commenced until the person in charge of the gassing has satisfied himself or herself that all persons other than the anti-rodent staff have left the area concerned and all domestic pets and liquid foodstuffs of such a kind or so stored as to be liable to absorb the fumigant have been removed from the fumigation area.
- (2) The person in charge of such gassing operations –
 - (a) must have available an electric torch, an approved gas mask and an approved carbon-dioxide apparatus, all in good working order and must be fully conversant with their use;
 - (b) must be capable of rendering first-aid and artificial respiration as applied to cyanide poisoning; and

(c) may allow no person, other than a member of the anti-rodent staff, to enter the area concerned until he or she is satisfied that there is no danger.

(3) A person who contravenes subsection (1) or subsection (2) commits an offence.

22. Notice of contravention

(1) Council may serve a notice of contravention on a person who committed an offence.

(2) A notice of contravention must –

(a) specify, at the time when the notice is issued, the name and residential and postal address, if either or both of these be known, of the person on whom the notice is served;

(b) state the particulars of the contravention;

(c) specify the amount of the penalty payable in respect of that contravention and the place where the penalty may be paid; and

(d) inform the person on whom the notice was served that he or she may, within 28 calendar days of the date of service of the notice -

(i) pay the penalty; or

(ii) inform Council in writing that he or she elects to be tried in court on a charge of having committed an offence.

(3) If the person elects to be tried in court he or she must, within seven calendar days, notify Council of his or her intention.

23. Penalties

A person who or organization who contravenes any provision or fails to comply with any provision of this by-law commits an offence and shall on conviction be liable to-

- (a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and imprisonment; and
- (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued; and
- (c) a further amount equal to any costs and expenses found by the court to have been incurred by Council as result of such contravention or failure.

24. Appeal

- (1) A person whose rights are affected by a decision of an official may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.
- (2) The municipal manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (3) The municipal manager must commence with an appeal within six weeks of lodgement of the appeal and decide the appeal within a reasonable time.

25. Limitation of liability

Council is not liable for any damage or loss caused by –

- (a) the exercise of any power or the performance of any duty in good faith under these by-laws; or
- (b) the failure to exercise any power, or perform any function of duty in good faith under these by-laws.

26. Revocation 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, and insofar as it has been made applicable to the municipality by the authorisation for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998.

27. Short title and commencement

This by-law shall be known as the Makhado Municipality: Public Health Fumigation By-laws and shall come into operation on the date of publication thereof in the Provincial Gazette.