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LOCAL AUTHORITY NOTICE

No. 108

NELSON MANDELA BAY METROPOLITAN MUNICIPALITY

FIREWORKS BY-LAW

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, the Nelson Mandela Bay Metropolitan Municipality, enacts as follows:-

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1. Definitions

In this By-law, unless the context indicates otherwise:

“**designated area**” means a place designated as such in terms of Section 3.

“**fireworks**” shall have the meaning assigned thereto in the Explosives Act 26 of 1956, as amended, and the Regulations framed thereunder, and shall include any article or thing commonly recognized as a firework;

“**municipality**” means the Nelson Mandela Bay Metropolitan 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;

“**peace officer**” shall have the meaning assigned thereto in the Criminal Procedure Act 51 of 1977, in respect of persons authorized by the municipality to enforce the provisions of this By-law.

“**public place**” means any square, park, recreation ground, beach, sports ground, sanitary lane or open space which has –

- (a) been provided, reserved or set apart for use by the public or at any time been dedicated to the public;
- (b) been used by the public without interruption for a period of at least thirty years; or at any time been declared or rendered such by the municipality or other competent authority;

“**street**” means any street, road, cycle path, thoroughfare or any other place, including –

- (a) the verge of any such road, street or thoroughfare
- (b) any footpath, sidewalk or similar pedestrian portion of a road reserve;
- (c) any bridge, ferry or drift traversed by any such road, street or thoroughfare;
- (d) any other object belonging to such road, street or thoroughfare, which has at any time been –
 - (i) dedicated to the public;
 - (ii) used without interruption by the public for a period of at least thirty years;

- (iii) declared or rendered such by the municipality or other competent authority, or
- (iv) constructed by a local authority, and
- (v) any land, with or without buildings or structures thereon, which is shown as a street on –
 - (aa) any plan of subdivision or diagram approved by the municipality or other competent authority and acted upon, or
 - (bb) any general plan as defined in the Land Survey Act, 1927, registered or filed in a deeds registry or Surveyor General's office;unless such land is on such plan or diagram described as a private street.

2. Principles and objectives

The municipality, aware of its duty to provide a safe and healthy environment, in this by-law regulates the discharge of fireworks in public places and resorts with the aim of safeguarding its residents and property and to minimize the effects of fireworks on animals and pets.

3. Designation of places and conditions

(1) The municipality may designate any public place or street or any part thereof within the municipal area as the only place at which fireworks may be discharged and may impose conditions for the discharge of fireworks in such designated area.

(2) In order to designate places where fireworks may be discharged, the municipality must obtain the input of the ward councillor, who must consult the ward committee members, in whose area of jurisdiction such a designated place falls and the municipality may obtain the input or comments of persons or organisations that may be affected negatively by such designation.

(3) The list of places designated and the conditions imposed by the municipality in terms of subsections (1) and (2) or any amendment thereof must be published by the municipality in terms of its communication strategy.

(4) The municipality may impose conditions as to the dates on which, periods or time and hours when the discharge of fireworks may take place on any designated area and may further impose conditions as to the manner of discharge and for the protection of animals.

(5) A person who fails to comply with the provisions of subsection (4) commits an offence.

4. Discharge of fireworks

(1) No person may at any time discharge any fireworks without the prior written permission of the municipality, whether in or outside an area designated by the municipality in terms of Section 3.

(2) No person may at any time discharge any fireworks in conflict with any conditions that may have been imposed in terms of section 3(4) by the municipality inside an area designated by the municipality in terms of Section 3.

(3) Any person who wishes to present a fireworks display in a public place or street must apply to the Chief Fire Officer for authorisation by completing and submitting an application in the form and manner determined by the Municipality together with-

- (a) the prescribed fee for processing the application;
- (b) proof of the prior written approval of the Chief of Explosives of the South African Police Services; and
- (c) a sketch plan of the proposed venue for the fireworks display, indicating-
 - (i) the demarcated area for the discharge and fallout of the fireworks; and
 - (ii) whether any of the following are situated within 500 metres from the demarcated area contemplated in subsection (i)-

- (aa) a hospital;
 - (bb) an animal hospital or veterinary surgery;
 - (cc) an establishment at which animals are lodged for reward;
 - (dd) an old age home catering for frail or semi-frail aged;
 - (ee) a petrol filling station;
 - (ff) a bulk storage installation for petroleum products or other flammable substances.
- (4) The application, prescribed fee and accompanying documentation must be submitted to the Chief Fire Officer at least 14 days before the date of the proposed fireworks display.
- (5) The municipality may not approve an application where any of the bodies or installations mentioned in subsection 3(c)(aa) to (ff) are situated within the 500 metres as stated in subsection 3(c)(ii) and unless the input of the ward councillor, who must consult the ward committee members, in whose area of jurisdiction such a designated place falls, has been obtained, and the municipality may obtain the input or comments of persons or organisations that may be affected negatively by such approval.
- (6) Upon approval of an application to present a fireworks display, the applicant must, by means of public notice in a newspaper circulated in the area in which the presentation is going to take place, notify residents of the intended display.
- (7) The notice contemplated in subsection (6) must be placed in at least two official languages not less than 7 days before the fireworks display and a copy of such notice must be provided to the Chief Fire Officer at least 48 hours prior to the display, failing which, such a display may not be held.
- (8) Any person who contravenes subsections (1), (2), (3), (6) or (7) commits an offence.

5. Dealing in fireworks

No person may deal in fireworks unless he or she holds the required fireworks license in terms of the Explosives Act.¹

6. Seizure of fireworks

A Peace Officer may take into his or her possession any fireworks found by him in contravention of section 4(1) and such fireworks must be dealt with in terms of the relevant provisions of the Criminal Procedure Act (No 51 of 1977) relating to seizure and disposal.

7. Offences and penalties

A person who has committed an offence in terms of this by-law is, on conviction, 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.

8. 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.

¹ Note: In terms of the Explosives Act it is the function of the SAPS to grant approval for dealing in fireworks and not that of the Municipality.

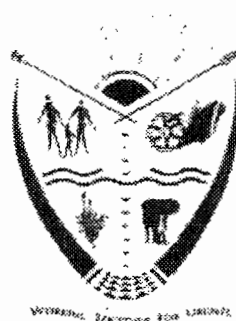
9. Short title and commencement

This by-law is known as the Fireworks By-law, and commences on the date of publication thereof in the Provincial Gazette.

NELSON MANDELA BAY

METROPOLITAN

MUNICIPALITY



COUNCIL MEETING

18 JUNE 2009 AT 09:00

**REPORT OF EXECUTIVE MAYOR TO METROPOLITAN COUNCIL
(18 JUNE 2009)**

**(SAFETY AND SECURITY SERVICES COMMITTEE : MEETING HELD 8 MAY 2009
– POSTPONED FROM 24 APRIL 2009)
(EXECUTIVE MAYOR MEETING HELD 20 MAY 2009)**

**1. FIREWORKS BY-LAW FOR THE NMBM (19/13/1/2/3) (Agenda p. 100 and p. 104)
(Min. No. 88/2009)**

The Committee on 14 November 2008 considered a report by the Executive Director : Safety and Security Services, setting out the background to the drafting of a Fireworks By-law for the NMBM by the Institute for Sustainable Government and Development (ISGAD) at the NMMU.

Advertisements were placed in local newspapers calling for public comments, followed by a public meeting and inputs received in petition format. A total of 2 824 signatures were received, calling for the total ban on fireworks and 83 were in favour of controlled public displays of fireworks, but not for the private use of fireworks.

The inputs received were considered and, where possible, included in the By-law. As regards the call for a total ban on fireworks, the Municipality's powers are subject to the Explosives Act, 26 of 1956, and it can therefore not place a ban on the sale of fireworks.

The Committee resolved that the Executive Director : Safety and Security Services, arrange a workshop for all Councillors early in 2009 for in-depth discussions of the draft and the proposed adoption by Council of the Fireworks By-law.

At the workshop for Councillors on 30 March 2009, the need for the proper control of fireworks and formal, written permission for discharging fireworks was emphasised, as well as the vital role of Ward Councillors and their Ward Committees to consult residents in their area considering the designation of areas for fireworks displays.

Most of the proposed amendments were included in the final draft of the Fireworks By-law, which was considered by the Committee on 8 May 2009. The By-law is attached as Annexure "A" hereto.

THE EXECUTIVE MAYOR RECOMMENDS:

That Council, by resolution taken by a majority of its full number, and in terms of Section 30 (2) of the Local Government Municipal Structures Act, No. 117 of 1998 (as amended) adopt the Fireworks By-law attached as Annexure "A" hereto, which will be effective from the date of promulgation.
