

- (a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and such 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 the municipality as result of such contravention or failure.

45. Conflict with other legislation

In the event of any conflict between any provision of this by-law and National and

Provincial legislation, standards, policies or guidelines, the National and Provincial legislation, standards, policies or guidelines shall prevail.

46. 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by the municipality or by any of the disestablished municipalities now incorporated in the municipality, are hereby repealed as far as they relate to matters provided for in this by-law, and insofar as it has been made applicable to the municipality by the authorisation for the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.

47. Short title and commencement

This by-law shall be known as the By-law relating to Roads and Streets and shall come into operation on the date of publication thereof in the Provincial Gazette.

9 November 2009

20657

BERGRIVIER MUNICIPALITY SOLID WASTE DISPOSAL BY-LAW

Under of section 156 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Bergrivier Municipality, enacts as follows:—

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1. Definitions

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

“attendant”, means an employee of the municipality or agent of the municipality duly authorised to be in charge of the disposal site;

“disposal site” means a site used for the accumulation of waste with the purpose of disposing or treatment of such waste and includes a waste transfer and recycling station;

“municipality” means the Municipality of Bergrivier established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“owner” also means lessee, occupier, resident or any person who obtains a benefit from the premises or is entitled thereto and also includes any insolvent estate, executor, administrator, trustee, liquidator judicial manager;

“premises” means residential-, business-, and industrial premises and includes any land, whether vacant, occupied or with buildings thereon, forming part of a piece of land laid out as a township, irrespective of being proclaimed as a township;

“removal day” means the day fixed by the municipality for removal of waste from premises and depending on the case may be multiple removals per week;

“waste” includes—

- (a) “business waste” which means any matter or substance arising out of the use of business premises but does not include, hazardous waste, material, domestic waste or garden waste;
- (b) “domestic waste” which means any fruit or vegetable peels, fruit or vegetable waste, general domestic waste as well as garden waste which is of such size that it may be deposited in a refuse bin;
- (c) “garden waste” which means waste originating from a gardening activity such as grass cutting, leaves, plants flowers or similar waste of such size that it can be placed in a refuse bin;
- (d) “hazardous waste” which means any waste, matter or substance which may be hazardous or harmful to the environment and residents or which may pollute the environment including asbestos, motor oils or lubricants, or any other waste, matter or substance which constitutes hazardous waste as envisaged in the Hazardous Substances Act, 1973, Act 15 of 1973;
- (e) “offensive waste” means any waste, matter or substance which may be harmful to the environment and residents and includes, but is not limited to—
 - (i) animal products, animal carcasses and meat as defined in the Meat Safety Act, (Act 40 of 2000) and in the Red Meat Regulations promulgated under GN 1072 of 17 September 2004;
 - (ii) fruit or vegetables or any by-product obtained from such fruit or vegetables;
 - (iii) perishable foodstuffs; and
 - (iv) health care waste as defined in the Western Cape Health Care Waste Management Act, 2007, (Act 7 of 2007).;
- (f) “materials” which means any stone, rock, sand, building materials or building rubble or any other type of composite or artificial materials such as plastic pipes and similar materials as well as materials which are utilised in the erection of buildings or structures or any other materials which constitute materials;

“waste bin” means a mobile container with a capacity determined by the municipality, or alternatively plastic bags, which the municipality may make available to each premises;

“waste management activities” means the generation, reduction and minimisation of waste, waste handling, which includes the separation, storage, collection, and transfer of waste, and waste treatment, which includes the recovery of waste, recovery being the recycling, reclamation and re-use of waste, and disposal of waste, and any word to which a meaning has been assigned in the Environment Conservation Act, 1989 (Act 73 of 1989) and in the Directions with regard to the Control and Management of General Communal and General Small Waste Disposal Sites issued under the Act and published per GN R91 in Government Gazette No. 23053 dated 1st February 2002, bears that meaning.

“waste transfer and recycling station” means a waste handling facility that receives and temporarily stores waste or any recyclable waste, or a combination thereof.

2. Purpose of by-laws

This by-law strive to promote the achievement of a safe and healthy environment for the benefit of residents within the area of jurisdiction of the municipality, and to provide for procedures, methods and practices to promote waste management activities such as, but not limited to, the dumping of waste and the management of solid waste disposal sites.

3. Applicable legislation

The Directions in terms of section 20(5)(b) of the Environment Conservation Act, 1989 (Act 73 of 1989) with regard to the Control and Management of General Communal and General Small Waste Disposal Sites as published in GN 91 in GG 23053 of 1 February 2002 apply.

4. Duties and powers of municipality

- (1) The municipality as the primary service provider in the municipal area has a duty to the local community to progressively ensure efficient, affordable, economical and sustainable access to waste management services in its area or a part of its area.

- (2) This duty is subject to—
 - (a) the duty of members of the local community as users of the municipality's waste management services or any other person making use of the municipality's waste management services to pay for the provision of the services, the prescribed charges, which must be priced in accordance with any nationally prescribed norms and standards for rates and tariffs; and
 - (b) the right of the municipality to differentiate between geographical areas when providing types of waste management services, without compromising on service equity in line with the Constitution.
- (3) The municipality must as far as is reasonably possible and subject to the provisions of this by-law provide, at a cost to users of the services prescribed by the municipality—
 - (a) for the collection of waste on a regular basis, except waste in its area, which is so situated that the cost of collecting it would be unreasonably high; and
 - (b) access to facilities for the recovery and disposal of waste.
- (4) The municipality must notify all users of its waste management services of any decisions taken in terms of this By-law.

5. Compulsory use of service

- (1) No one except the municipality or a person authorised by the municipality may remove any refuse from any premises or dispose thereof.
- (2) Each owner of premises must make use of the service provided by the municipality for the removal or disposal of refuse, in respect of refuse originating from such premises.
- (3) The tariff as fixed by the municipality shall be payable to the municipality by the owner, irrespective whether the service is being used, or not.
- (4) The provisions of this section do not apply to an owner of residential premises who occasionally wishes to dispose of garden refuse generated on such premises.
- (5) A person who contravenes the provisions of subsections (1) and (2) commits an offence.

6. Establishment and control of disposal site

The municipality may establish and control a disposal site, or may appoint agents or may contract some other person or body to control, manage and operate a disposal site on behalf of the municipality in accordance with the provisions of this by-law and the provisions of any other legislation that may be applicable.

7. Access to disposal site

- (1) Only a person wishing to dump waste who has paid the prescribed fees or who is in possession of a written permission issued by the municipality which permits him or her to dump such waste at a disposal site and a person having obtained the written consent of the municipality to recycle any materials or objects on such a site, is entitled to enter the disposal site or to be on the site.
- (2) Notwithstanding anything to the contrary contained in this by-law, any employee of the municipality or anybody acting on behalf of the municipality and duly authorised thereto, may enter a disposal site at any time in exercising his or her duties.
- (3) A person making use of the disposal site or entering the disposal site, do so at his or her own risk and the municipality accepts no responsibility for the safety of such person or any damages or losses sustained by such person.
- (4) A person who enters a disposal site or who is found on such a site in contravention of the provisions of this section commits an offence.

8. Off-loading of waste

- (1) A person who wishes to dump waste at a disposal site, must off-load such waste at such a place within the borders of the disposal site and in such a manner as the attendant may direct.
- (2) The municipality may—
 - (a) set aside any part of a disposal site where only waste of a particular kind may be dumped or deposited.
 - (b) limit the type or size of vehicle from which waste may be dumped or deposited at any disposal site.
 - (c) limit the quantity of waste in general or the quantity of a particular type of waste which may be dumped or deposited at any disposal site.
 - (d) the days when and hours during which dumping may take place at any disposal site.
- (3) Any requirement imposed in terms of this by-law must be indicated to the public by means of an appropriate notice erected at the entrance of the disposal site concerned and any instruction issued by an official of the municipality or a person acting on behalf of the municipality in charge of access control at the dumping site, shall be strictly complied with.
- (4) Notwithstanding the provisions of subsection (2) the municipality reserves the right not to permit the dumping of hazardous or offensive waste at a disposal site.
- (5) A person who contravenes any of the provisions of this section commits an offence.

9. Ownership of waste

- (1) Waste dumped at a disposal site, becomes the property of the municipality and no person who is not duly authorised by the municipality to do so may remove or interfere with such waste.
- (2) A person who contravenes subsection (1) commits an offence.

10. Categories of waste

The municipality may, for the purposes of this by-law, categorise waste into different categories.

11. Separation of waste for recycling purposes

The municipality may require that waste be separated into different kinds and nature of waste for the purposes of recycling or for any other purpose in terms of this by-law.

12. Provision of waste bins

(1) The municipality may—

- (a) provide waste bins, or alternatively plastic bags, for the disposal of waste generated on premises; and
- (b) authorise the use of bins and lids constructed of rubber or other material where the design and construction has been approved by the municipality.

(2) Waste bins other than plastic bags provided in terms of subsection (1) remain the property of the municipality.

(3) The municipality may prescribe special waste bins for the reception and storage of such types of waste as the municipality may specify and may by written notice on the owner of premises require the owner to provide at his or her own expense such number of special waste bins as are specified in the notice.

(4) Where any waste bin provided on premises is—

- (a) of a size likely to hinder the efficient removal of waste there from by employees of the municipality;
- (b) is insufficient for the reception of all waste which is to be removed from such premises by the municipality;
- (c) dilapidated; or
- (d) likely to cause a nuisance,

the municipality may by notice, require the owner of the premises to provide, at his or her own expense, an additional number of waste bins or such other means of storing receptacles as may be necessary to comply with the provisions of this by-law.

(5) A waste bin shall be replaced as and when it is necessary, provided that where such waste bin has to be replaced as a result of theft or damage caused through the negligence of the owner, such owner shall be held liable for the cost of replacing it.

(6) No person may dispose of any waste by placing it anywhere else than in a waste bin provided or approved by the municipality.

(7) In respect of a group development the municipality may provide less waste bins per household subject to the following conditions—

- (a) a central refuse collection point must be provided by the managing body;
- (b) the managing body must apply in writing for the reduction of waste bins issued to the development;
- (c) the reduced number of bins must be approved by the municipality; and
- (d) the managing body shall be held liable for payment of the account for waste removal.

(8) A person who contravenes a provision of subsection (6) or who fails to comply with a notice issued in terms of subsections (3) and (4) commits an offence.

13. Location of waste bins

(1) The owner of premises must provide adequate space on the premises where a waste bin or other receptacle for the purpose of depositing waste or a specific category of waste are kept, and the space must—

- (a) comply with requirements imposed by the municipality by notice to the owner;
- (b) where applicable, be constructed in accordance with the requirements of any applicable building regulations and be so located that the waste bin or receptacle is not visible from a street or public place;
- (c) where applicable, be so located as to permit convenient access to and egress from such place for a waste collection vehicle; and
- (d) be in a location convenient for the use by users or occupants of the premises so as to discourage littering or the unhealthy accumulation of waste.

(2) In the case of multi-storey buildings, the municipality may approve the installation of refuse chutes of an approved design and specification, and subject to the submission and approval of the plans for such installation.

(3) The owner of premises must place or cause the waste bins to be placed in the space provided and must at all times keep it there.

(4) A person who contravenes a provision of subsection (1) or (3) commits an offence.

14. Maintenance of waste bins

(1) The occupier of premises must ensure that a waste bin other than plastic bags is—

- (a) at all times maintained in good order and repair;
- (b) emptied and cleansed when full, so that its contents do not become a nuisance or provide grounds for complaint;
- (c) protected against unauthorised disturbance or interference at all times when waste is not being deposited into it or discharged from it.

- (2) No person may remove a waste bin from any premises to which it has been allocated or destroy or damage it, or permit it to be removed, destroyed or damaged.
- (3) A person who contravenes any provision of this section commits an offence.

15. Collection of waste

- (1) The municipality may indicate a position within or outside the premises where waste bins must be placed for the collection and removal thereof and may require certain kinds of waste, such as garden waste, to be bundled or packaged and be placed in that position at the times and for a period as the municipality may require.
- (2) The municipality shall on removal days collect only waste placed in waste bins or other containers approved by it or which is bundled or packaged in a manner approved by the municipality.
- (3) Where a particular kind of waste as stipulated by the municipality is not collected by the municipality from premises, the owner of the waste must arrange for the collection and transport of the waste as often as may be necessary to prevent undue accumulation or any nuisance arising there from, to a waste disposal or processing site under the control of the municipality, or to such other place as may be approved by the municipality.
- (4) The municipality may decide on separate times on which particular categories of waste are to be collected.
- (5) The municipality may—
 - (a) cause collections to be made at regular periods daily or otherwise, and may alter dates of collection;
 - (b) increase the number of collections as it may deem necessary or desirable; or
 - (c) make additional collections should it be desirable.
- (6) In the event of any additional collection being required by the owner of premises, the additional collection will be subject to the approval of the municipality and each additional collection must be paid for by the owner of premises from which the waste is collected at the tariff prescribed by the municipality.
- (7) The municipality may, upon application by the owner of premises, approve alternative arrangements for removal of waste from such premises.
- (8) A person who contravenes the provisions of section (1) or (3) commits an offence.

16. Access to premises

Except where otherwise approved by the municipality, the owner of premises must ensure that access from the nearest public road to the waste storage area on a premises is independent and unimpeded, and an owner who fails to do so, commits an offence.

17. Right of entry

- (1) Any duly authorised employee of the municipality is entitled to enter premises in respect of which the municipality's waste management services are rendered at any reasonable time on any day, or at any other time at which the service is ordinarily rendered for any of the following purposes:
 - (a) for collecting and supervising the collection of waste;
 - (b) for replacing waste bins; or
 - (c) for inspecting the means of access to the premises, or the space where waste bins are kept so as to ensure that they are accessible and convenient for the collectors.
- (2) The owner of the premises may not refuse access to the premises by an employee of the municipality.
- (3) An owner of premises commits an offence if he or she—
 - (a) denies access to the premises to an authorised employee of the municipality in the performance of his or her duties; or
 - (b) obstructs or impedes such employee of the municipality in the performance of his or her duties.

18. Dumping and littering

- (1) No person may—
 - (a) except by permission of the owner or of the person or authority having control thereof; or
 - (b) unless authorised by law to do so, dump, accumulate, place, deposit or leave any waste whatsoever, whether for gain or otherwise, or cause or allow to be dumped, accumulated, placed, deposited or left such waste on or in—
 - (i) any road, highway, street, lane, public footway or pavement or any road verge;
 - (ii) any commonage land, village green, park, recreation ground or other open space to which the public have access;
 - (iii) any drain, watercourse, flood prone areas, tidal or other water in or abutting on any such road, highway, street, lane, public footway or pavement, roadside or other open space to which the public have access; or
 - (iv) private or municipal land,
- (2) Should a person do any of the acts contemplated in subsection (1), the municipality may by written notice require any of the following persons to dispose of, destroy or remove the waste within the period stated in the notice:
 - (a) the person directly or indirectly responsible for dumping, accumulating, placing, depositing, or leaving the waste;
 - (b) the owner of the waste, whether or not he is responsible for dumping, accumulating, placing, depositing, or leaving the waste; or

- (c) the owner of the premises on which the waste was dumped, accumulated, placed, deposited, or left, whether or not he or she is responsible therefor.
- (3) If a person fails to comply with the requirements of a written notice, the municipality may dispose of, destroy or remove the waste and may recover the cost of doing so from the person or persons to whom the notice was issued.
- (4) If waste has been deposited in or on any land in contravention of subsection (1) and—
 - (a) in order to remove or prevent pollution of land, water or air or harm to human health, it is necessary that the waste be forthwith removed or other steps taken to eliminate or reduce the consequences of the deposit or both; and
 - (b) there is no occupier of the land; or
 - (c) the owner neither made nor knowingly permitted the deposit of the waste, the municipality may remove the waste or take other steps to eliminate or reduce the consequences of the deposit and is entitled to recover the cost incurred by it—
 - (i) from the owner of the land unless he or she proves that he or she neither made nor knowingly caused nor knowingly permitted the deposit of the waste; or
 - (ii) from any person who deposited or knowingly caused or knowingly permitted the deposit of any of the waste.
- (5) Any waste removed by the municipality belongs to the municipality and may be dealt with as the municipality deems fit.
- (6) A person who contravenes a provision of subsection (1) commits an offence.

19. Burning of waste

No person may burn waste without the written approval of the municipality.

20. Charges

- (1) The municipality may fix the charges payable to it for the removal of waste from premises or the dumping of waste at a disposal site under the control of the municipality.
- (2) A person who fails or refuses to pay the charges contemplated in subsection (1) commits an offence.

21. Exemptions

- (1) A person may by means of a written application, in which the reasons are given in full, apply to the municipality for exemption from any provision of this by-law.
- (2) The municipality may—
 - (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;
 - (b) alter or cancel any exemption or condition in an exemption; or
 - (c) refuse to grant an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

22. Liaison forums in community

- (1) The municipality may establish one or more liaison forums in a community for the purposes of—
 - (a) creating conditions for a local community to participate in the affairs of the municipality; and
 - (b) promoting the waste management activities of the municipality.
- (2) A liaison forum may consist of—
 - (a) a member or members of an interest group, or an affected person, in the spirit of section 2(4)(f)–(h) of the National Environmental Management Act, 1998 (Act 107 of 1998);
 - (b) a member or members of a community in whose immediate area a solid waste disposal site exists or may come be established;
 - (c) a designated official or officials of the municipality;
 - (d) a councillor; and
 - (e) such other person or persons the municipality may decide on.
- (3) (a) The municipality may, when considering an application for consent, permit or exemption certificate in terms of this by-law, where applicable, request the input of a liaison forum.
- (b) A liaison forum, person or persons contemplated in subsection (2), or any other person may, on own initiative, having regard to the provisions of section 31 of the National Environmental Management Act, 1998, submit an input to the municipality for consideration.

23. Authentication and service of order, notice or other document

- (1) An order, notice or other document requiring authentication by the municipality must be sufficiently signed by the Municipal Manager shall be deemed to be duly issued if it is signed by the Municipal Manager.
- (2) Any notice or other document that is served on a person in terms of this by-law is regarded as having been served—
 - (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgment of the posting thereof from the postal service is obtained;
 - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
 - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates; or
 - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate.
- (3) Service of a copy shall be deemed to be service of the original.
- (4) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

24. Appeal

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefor 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.

25. Penalties

A person who has committed an offence in terms of this by-law is liable upon conviction to a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment and, 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, a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.

26. Conflict with other legislation

In the event of any conflict between any provision of this by-law and National and Provincial legislation, standards, policies or guidelines, the National and Provincial legislation, standards, policies or guidelines shall prevail.

27. 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.

28. Short title and commencement

This by-law shall be known as the Solid Waste Disposal By-law, and commences on the date of publication thereof in the Provincial Gazette.