

LOCAL AUTHORITY NOTICE 37

NELSON MANDELA BAY METROPOLITAN MUNICIPALITY: NOISE CONTROL BY-LAW

Under the powers conferred by section 156(2) of the Constitution of the Republic of South Africa, 1996 the Nelson Mandela Bay Metropolitan Municipality enacts as follows –

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PART I: INTERPRETATION AND OBJECTIVES

1. Definitions

In these by-laws any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned to it and, unless the context otherwise indicates –

“**Act**” means the Environment Conservation Act, 1989 (Act No. 73 of 1989);

“**ambient sound level**” means the reading on an integrating impulse sound level meter taken at a measuring point, in the absence of any alleged disturbing noise, at the end of a total period of at least 10 minutes after such meter was put into operation’

“**animal**” also includes birds and poultry;

“**controlled area**” means a piece of land designed by a municipality where, in the case of –

- (a) road traffic noise in the vicinity of a road -
 - (i) the reading on an integrating impulse sound level meter, taken outdoors at the end of a period of 24 hours while such meter was in operation, exceeds 60 dBA; or
 - (ii) the outdoor equivalent continuous “A”-weighed sound pressure level at a height of at least 1,2 metres, but not more than 1,4 metres,

- above the ground for a period of 24 hours as calculated in accordance with SANS 10210, and projected for a period of 15 years following the date on which the municipality has made such designation, exceeds 60 dBA.
- (b) air traffic noise in the vicinity of an airfield, the calculated noisiness index, projected for a period of 15 years following the date on which the municipality made such designation, exceeds 65 dBA;
- (c) industrial noise in the vicinity of an industry –
- (i) the reading on an integrating sound level meter, set on impulse or faster acquisition rate, taken outdoors at the end of a period of 24 hours while such meter was in operation, exceeds 60 dBA; or
 - (ii) the calculated outdoor equivalent continuous “A”-weighted sound pressure level at a height of at least 1,2 metres, but not more than 1,4 metres, above the ground for a period of 24 hours, exceeds 60 dBA, or
- (d) noise from any other source in the vicinity of that source -
- (i) the reading on an integrating sound level meter, set on impulse or faster acquisition rate, taken outdoors at the end of a period extending from the time when such source of noise became active until the time when it was no longer active, while such meter was in operation, exceeds 65 dBA; or
 - (ii) the outdoor equivalent continuous “A”-weighted sound pressure level at a height of at least 1,2 metres, but not more than 1,4 metres, above the ground, as calculated in accordance with acceptable mathematical/acoustic methods for a period extending from the time when the source of noise became active until the time when it was no longer active, and projected for a period of 15 years following the date on which the municipality made such designation, exceeds 65 dBA: Provided that methods of calculation as described in SABS ARP 020 may be used for the calculation.

“**dB**A” means the value of the sound pressure level in decibels, determined using a frequency-weighting network A, and derived from the following equation:

$$L_{P_A} = 10 \log_{10} \left[\frac{P_A}{P_0} \right]^2$$

where –

P_A – the ‘A’-weighted sound pressure; and

P_0 – the reference sound pressure

($P_0 = 20 \mu\text{Pa}$)

“**disturbing noise**” means a noise level that causes the ambient sound level to rise above the designated sound level, or if no sound level has been designated, a sound level that exceeds the ambient sound level by 7 dBA or more or that exceeds the typical rating levels for ambient noise in districts, indicated in table 2 of SANS 10103;

“**erect**” also means alter, convert, extend or re-erect;

“**exempted vehicle**” means a vehicle listed in Annexure A to SANS 10281;

“integrating sound level meter” means a device that integrates a function of the root mean square value of sound pressure over a period of time and indicates the result in dBA;

“integrating impulse sound level meter” means an integrating sound level meter set on “I”-time weighting or at a sampling rate greater than “I” weighting and integrated to provide the result in dBA;

“measuring point” relating to –

- (a) a piece of land from which an alleged disturbing noise emanates, means a point outside the property projection plane where an alleged disturbing noise shall be measured in accordance with the provisions of section 16;
- (b) a building with more than one occupant, means a point in or outside the building where an alleged disturbing noise shall be measured in accordance with the provisions of regulation 16; and
- (c) a stationary vehicle, means a point as described in SANS 10181 where a measuring microphone shall be placed;

“municipality” means the Nelson Mandela Bay Metropolitan Municipality 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 thereof or any employee thereof 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;

“noise control officer” means a person with a qualification equivalent to a senior certificate plus three years tertiary education in engineering, physical sciences or health sciences and who is registered with a professional council;

“noise level” means the reading on an integrating impulse sound level meter taken at a measuring point in the presence of any alleged disturbing noise at the end of a total period of at least 10 minutes after such meter was put into operation, and, if the alleged disturbing noise has a clearly discernible pitch, for example, a whistle, buzz, drone or music;

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

“noisiness index” means a number expressed in dBA as defined in SANS 10117;

“non-exempted vehicle” means a vehicle not listed in Annexure A to SANS 10281;

“plant” means a refrigeration machine, air conditioners, fan system, compressor, power generator or pump or mechanical driven device;

“property projection plane” means a vertical plane on, and including the boundary line of a piece of land defining the boundaries of such piece of land in space;

“recreational vehicle” means –

- (a) an off-road vehicle, scrambler, dune buggy or ultra-light aircraft;
- (b) a model aircraft, vessel or vehicle;
- (c) any aircraft or helicopter used for sport or recreational purposes;
- (d) a vessel used on water; or
- (e) any other vessel or model which is used for sport or recreational purposes;

“SABS 0103” (now SANS 10103) means South African Bureau of Standards publication No.10103 entitled: “The measurement and rating of environmental noise with respect to annoyance and to speech communication” published under

Government Notice No. 718 in Government Gazette No. 18022 of 30 May 1997, as amended from time to time or its corresponding replacement;

“SANS 10117” means South African Bureau of Standards publication No. 0117 – 1974 titled: “Code of Practice for the determination and limitation of disturbance around an aerodrome due to noise from aeroplanes” published under Government Notice No. 151 of 01 February 1985, as amended from time to time or its corresponding replacement;

“SANS 10181” means South African Bureau of Standards publication No. 0181 – 1981 titled: “Code of Practice for the measurement of noise emitted by road vehicles when stationary” published under General Notice No. 463 of 09 July 1982, as amended from time to time or its corresponding replacement;

“SABS 0210” means South African Bureau of Standards publication No. 0210 – 1986 titled: “Code of Practice for calculating and predicting road traffic noise” published under Government Notice No. 358 of 20 February 1987, as amended from time to time or its corresponding replacement;

“SANS 10281” means South African Bureau of Standards publication No. 0281 – 1997 titled: “Engine speed (S values), reference sound levels and permissible sound levels of stationary road vehicles” published under Government Notices 761, 762 and 763 in Government Gazette No. 18040 of 06 June 1997, as amended from time to time or its corresponding replacement;

“sound level” means the reading on a sound level meter taken at a measuring point at the end of the measurement period;

“sound level meter” means a device measuring sound pressure while it is set on “F”-time weighting or at a sampling rate greater than “I” weighting and integrated to provide the result in dBA; and

“zone sound level” means a derived dBA value determined indirectly by means of a series of measurements, calculations or table readings and designated by a municipality for an area.

2. Principles and objectives

(1) The municipality, aware of the Constitutional right of every person to an environment that is not harmful to his or her health or well-being adopts this by-law with the aim of protecting and promoting the health and well-being of all people in the Nelson Mandela Bay Metropolitan area by providing, in conjunction with applicable laws, a legal and administrative framework within which the municipality can develop and manage its obligations.

(3) In the implementation and enforcement of this by-law, the municipality may take into consideration the realities of the Nelson Mandela Bay Metropolitan area, the different customs, cultures, circumstances, geographical areas, kinds of property levels of development and conventions and the municipality may use the devices provided for in this by-law, including the application of different norms, standards and guidelines and the granting of exemptions.

3. Authentication and service of notices and other documents

(1) A notice issued by the municipality in terms of this by-law is deemed to be duly issued if it is signed by the noise control officer.

(2) Any notice or other document that is served on a person in terms of this by-law is regarded as having been duly 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 16 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 land or business premises to which it relates;
 - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate; or
 - (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (3) Service of a copy is deemed to be service of the original.
- (4) When any notice or other document is served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.

4. Interdict

- (1) Any person who feels aggrieved by any contravention of or any failure to comply with any provision of any by-law, shall have the legal capacity to apply to any competent court of law for an interdict in connection with the contravention or failure to comply. (2) Any interdict referred to in subsection (1) may, in addition to being applied for against the occupier of any premises, also be applied for against any absent owner thereof.

PART II: NOISE POLLUTION MANAGEMENT

5. Prohibition of Disturbing Noise

No person may make, produce or cause a disturbing noise, or allow it to be made, produced or caused by any person, animal, machine, device or apparatus or any combination thereof.

6. Prohibition of Noise Nuisance

No person may –

- (a) operate or play, or allow to be operated or played, a radio, television set, drum, musical instrument, sound amplifier, loudspeaker system or similar device producing, reproducing or amplifying sound so as to cause a noise nuisance;
- (b) offer any article for sale by shouting, ringing a bell or making other sounds or by allowing it to be done in a manner which causes a noise nuisance;
- (c) allow an animal owned or controlled by him or her to cause a noise nuisance;
- (d) build, make, construct, repair, rebuild, modify, operate or test a vehicle, vessel, aircraft or object on or near residential premises, or allow, such actions if it cause a noise nuisance;

- (e) use or discharge any explosive, firearm or similar device that emits sounds and may cause a noise nuisance, or allow such actions, except with the prior consent in writing of the municipality concerned and subject to such condition as the municipality may deem necessary;
- (f) on a piece of land or in water or in airspace above that piece of land designated by a municipality by means of a notice in the press –
 - (i) move about on or in a recreational vehicle; or
 - (ii) exercise control over a recreational vehicle; or
 - (iii) as the owner or person in control of the piece of land, water or airspace, allow such activity to take place, if this cause a noise nuisance;
- (g) except in an emergency, emit a sound, or allow a sound to be emitted, by means of a bell, carillon, siren, hooter, static alarm, whistle, loudspeaker or similar device, if it cause a noise nuisance;
- (h) operate any machinery, saw, sander, drill, grinder, lawnmower, power tool or similar device or allow it to be operated in a residential area during the following hours:
 - (i) Before 06:00 and after 18:00 from Monday to Saturday; and
 - (ii) before 08:00 and after 14:00 on a Sunday; orif it causes a noise nuisance or noise disturbance.
- (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 such actions, if it causes a noise nuisance;
- (j) use any power tool or power equipment for construction work, drilling work or demolition work, or allow it to be used in or near a residential area during the following hours:
 - (i) Before 06:00 and after 18:00 from Monday to Saturday; and
 - (ii) before 08:00 and after 14:00 on a Sunday, orif it causes a noise nuisance or noise disturbance.

7. Land Use

- (1) No person may –
 - (a) establish a new township unless the lay-out plans concerned, if required by the municipality, indicate in accordance with the specifications of the municipality the existing and future sources of noise, with concomitant dBA values, which are foreseen in the township for a period of 15 years following the date on which the erection of the buildings in and around the township commence;
 - (b) make changes to existing facilities or existing uses of land or buildings or erect new buildings, including, but not limited to places of entertainment, sports bars, discotheques or any place where amplified sound is used, if these will house or cause activities, that will, after such changes or erection, cause a disturbing noise, unless precautionary measures to prevent the disturbing noises have been taken to the satisfaction of the municipality;
 - (c) build a road or change an existing road, or alter the speed limit on a road, if this will cause an increase in noise in or near residential areas, or office, church, hospital or educational buildings, unless the need for noise control measures have been properly determined by the municipality in consultation with the authority concerned to ensure

that the land in the vicinity of such roads will not be designated as a controlled area;

- (d) install, replace or modify a plant with a total input power exceeding 10 kilowatts on any premises, unless the municipality has been notified by the owner of the plant in writing at least 14 days before such installation, replacement or modification of –
 - (i) the particulars of the plant;
 - (ii) the number, street address and title deed description of the premises concerned; and
 - (iii) the date on which the installation, replacement or modification shall commence,

provided that if an existing plant had to be replaced by necessity without preceding notification to the municipality, the municipality must be notified thereof by the owner of the plant in writing within 14 days after the replacement of the plant.

(2) The municipality may -

- (a) before commencement with any action as contemplated in subsection (1)(b), require that noise impact assessments or tests be conducted by the owner, developer, tenant or occupant of the facilities, land or buildings and that reports or certificates relating to the noise impact be submitted;
- (b) if excavation work, earthmoving work, pumping work, drilling work, construction work, or demolition work or any similar activity, power generation or music causes or may cause a noise nuisance or a disturbing noise, instruct in writing that such work, activity, generation or music be forthwith discontinued until such conditions as the municipality may deem necessary have been complied with;
- (c) set conditions relating to noise control to be included in the conditions of the establishment of a new township, in order to achieve the objectives of the Act;

8. Designation of Controlled Areas

(1) The municipality may –

- (a) by notice in the provincial gazette, designate a controlled area in its area of jurisdiction or amend or cancel an existing controlled area; and by notice in the Provincial Gazette; and
- (b) designate zone sound levels for specific areas and for specific times in its area of jurisdiction or amend or cancel such designation;

(2) No person may –

- (a) erect educational, residential, flat, hospital, church or office buildings in an existing township in a controlled area or area for which a zone sound level has been designated in terms of subsection (1)(b), unless acoustic screening measures have been provided in the building to limit the reading on an integrating impulse sound level meter, measured inside the building after completion, to 40 dBA or such level as may be determined in accordance with subsection (1)(b): Provided that any airconditioning or ventilating system shall be switched off during the course of such noise measurements;
- (b) locate educational, residential, hospital or church erven within a controlled area in a new township or an area that has been rezoned:

Provided that such situation may be allowed by the municipality in accordance with the acoustic screening measures mentioned by that municipality in the approved building plans.

9. Motor Vehicles

(1) No person may drive a vehicle, or allow it to be driven, on a public road, if the sound level at the measuring point measured in accordance with the procedure prescribed in SANS 10181 exceeds:

- (a) in the case of a non-exempted vehicle, the sound level specified in Table 1 of SANS 10281 for that type of vehicle; or
- (b) in the case of an exempted vehicle, the applicable sound level indicated in the tables of Annexure A to SANS 10281, for that type of vehicle by more than 5 dBA;

(2) The municipality may –

- (a) in order to determine whether a vehicle being used on any road in the area of jurisdiction of that municipality, including a private, provincial or national road crossing its area of jurisdiction, complies with the provisions of these regulations, instruct the owner or person in control of the vehicle –
 - (i) to have an inspection or test conducted on the vehicle as the municipality may deem necessary, on a date and at a time and place determined by the municipality in writing; and
 - (ii) to stop the vehicle or cause it to be stopped;
- (b) subject to the provisions of subsections (3) and (4) and the applicable provisions of any other law, attach a vehicle if the sound level of such vehicle exceeds the sound level referred to in subsection (1) by more than 5 dBA.

(3) A vehicle attached under subsection (2)(b) must be kept in safe custody by a municipality;

(4) The municipality may lift the attachment contemplated in subsection (2)(b) if the owner or person in control of the vehicle concerned has been instructed in writing by such authority –

- (a) to repair or to modify the vehicle concerned or to cause it to be repaired or to be modified; and
- (b) to have any inspection or test, as the municipality may deem necessary, conducted on the vehicle on a date and a time and place mentioned in the instruction.

10. Music, Open-Air Music Festivals and Similar Gatherings

(1) Subject to the provisions of sections 5 and 6(a), no person may operate or play a radio, television set, gramophone, recording device, drum, musical instrument, sound amplifier or similar device producing, reproducing or amplifying sound, or allow it to be operated or played, in a public place, if the noise level, measured at any point which may be occupied by a member of the public or at one metre from the source of the sound, exceeds 95 dBA, unless permission has been obtained from the municipality.

(2) No person may stage an open-air music festival or similar gathering without the prior written consent of the municipality and the municipality may impose conditions.

(3) If any music causes or may cause a noise nuisance or a disturbing noise, the municipality may instruct in writing that such music be forthwith discontinued until such conditions as the municipality may deem necessary have been complied with.

(4) Subject to the provisions of subsections (5) and (6) and the applicable provisions of any other law, the municipality may attach any instrument used to generate music if the sound level of such instrument exceeds the sound level referred to in subsection (1) and no permission has been obtained from the municipality.

(5) An instrument attached under subsection (4) shall be kept in safe custody by a municipality.

(6) The municipality may lift the attachment contemplated in subsection (4) if the owner or person in control of the instrument has applied for permission in terms of subsection (1).

PART III: GENERAL PROVISIONS

11. General Powers of the municipality

The municipality may –

- (a) for the purpose of applying these regulations, at any reasonable time enter a premises –
 - (i) to conduct any examination, inquiry or inspection thereon as it may deem expedient; and
 - (ii) to take any steps it may deem necessary;
- (b) if a noise emanating from a building premises, vehicle, recreational vehicle or street is a disturbing noise or noise nuisance, instruct in writing the person causing such noise or who is responsible therefore, or the owner or occupant of such building, premises, vehicle, recreational vehicle or street, or all such persons, to discontinue or cause to be discontinued such noise or to take steps to lower the level of such noise to a level conforming to the requirements of these regulations within the period stipulated in the instruction: Provided that the provisions of the paragraph shall not apply in respect of a disturbing noise or noise nuisance caused by rail vehicles or air traffic or by vehicles that are not used as recreational vehicles on a public road;
- (c) if the owner or person in charge of an animal fails to comply with an instruction referred to in subsection (b), subject to the applicable provisions of any other law, impound or cause to be impounded such animal;
- (d) impose such conditions as it deems fit when granting any permission or exemption in terms of these regulations, including the specification of times and days when activities that may cause noise are permitted or prohibited;
- (e) subject to the applicable provisions of any other law, place or cause to be placed measuring instruments or similar devices, road traffic signs or notices at any place within its area of jurisdiction for the enforcement of the provisions of these regulations: Provided that road traffic signs and notices shall be placed on private property only with the permission of the owner.

12. General prohibition

No person may –

- (a) fail to comply with a written condition, instruction, notice, requirement or demand issued by a municipality in terms of these regulations;
- (b) tamper with, remove, put out of action, damage or impair the functioning of a noise monitoring system, noise limiter, noise measuring instrument, acoustic device, road traffic sign or notice placed in a position by or on behalf of a municipality;
- (c) for the purposes of these regulations, in respect of a duly authorized employee of a municipality –
 - (i) fail or refuse to grant admission to such employee to enter and to inspect a premises;
 - (ii) fail or refuse to give information which may lawfully be required of him or her to such employee;
 - (iii) hinder or obstruct such employee in the execution of his or her duties; or
 - (iv) give false or misleading information to such employee knowing that it is false or misleading.

13. Use of Measuring Instruments

- (1) Any person taking reading must ensure that –
 - (a) the acoustic sensitivity of sound level meters is checked before and after every series of measurements by using a sound calibrator, verified every two years by an accredited calibration laboratory for compliance with the specifications for accuracy of national codes of practice for acoustics, to comply with the Measuring Units and National Measuring Standards Act 2006 (Act No. 18 of 2006);
 - (b) the microphones of sound measuring instruments are at all times provided with a windshield;
 - (c) the sound measuring instruments are operated strictly in accordance with the manufacturer's instructions; and
 - (d) sound measuring instruments are verified every two years by an accredited calibration laboratory for compliance with the specifications for accuracy of national codes of practice for acoustics, to comply with the Measuring Units and National Measuring Standards Act 2006 (Act No. 18 of 2006).
- (2) The measuring of dBA values in respect of controlled areas, ambient sound levels or noise levels in terms of these regulations shall be done as follows:
 - (a) outdoor measurements on a piece of land: By placing the microphone of an integrating impulse sound level meter at least 1,2 metres, but not more than 1,4 metres, above the ground and at least 3,5 metres away from walls, buildings or other sound reflecting surfaces; and
 - (b) indoor measurements in a room or enclosed space which is not ventilated mechanically: By placing the microphone of an integrating impulse sound level meter at least 1,2 metres, but not more than 1,4 metres, above the floor and at least 1,2 metres away from the wall, with all the windows and outer doors of the room or enclosed space entirely open: Provided that windows and doors are closed for indoor measurements in rooms or enclosed spaces which are mechanically ventilated.
- (3) Any deviation from heights and distances referred to in subsection (2) shall be reported with the furnishing of reason.

14. Exemptions

- (1) The provision of these regulations shall not apply, if –
 - (a) the emission of sound is necessary for the purpose of warning people of a dangerous situation; or
 - (b) the emission of sound takes place during an emergency.
- (2) Any person may by means of a written application apply to the municipality concerned for exemption from any provision of these regulations.
- (3) 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 shall be stipulated therein;
 - (b) alter or cancel any exemption or condition in an exemption;
 - (c) refuse to grant an exemption.
- (4) An exemption shall not take effect before the applicant has undertaken in writing to comply with all conditions imposed by a municipality under subsection (3): Provided that if activities are commenced before such undertaking has been submitted to the municipality concerned, the exemption shall lapse.
- (5) If any condition of an exemption is not complied with the exemption shall lapse forthwith.

15. Offences and penalties

Any person who contravenes or fails to comply with any provision of this by-law will be guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine and such imprisonment, and, in the event of a continuing contravention, to a fine for every day such offence continues, or to both such fine and such imprisonment for each day on which such contravention continues, or in default of payment thereof, to imprisonment.

16. Restriction of Liability

No authorized employee of the municipality shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this by-law.

17. 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.

18. Short title and commencement

This by-law shall be known as the Noise Control By-law of the Nelson Mandela Bay Metropolitan Municipality and comes into operation on the date of publication thereof in the Provincial Gazette.