

THEEWATERSKLOOF MUNICIPALITY

CONTROL OF FIREWORKS BY-LAW

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Municipal Council of the Theewaterskloof Municipality, hereby enacts as follows:

PREAMBLE

The Municipality has a responsibility to ensure a safe and healthy work and living environment for the residents of the Theewaterskloof Municipality, and the purpose of this by-law is to control the discharge of fireworks for the protection of people and property, and to reduce the impact of fireworks on the well-being of animals and pets.

TABLE OF CONTENTS

1. Interpretation
2. Application
3. Designation of places and conditions for the discharge of fireworks
4. Discharging of fireworks
5. Seizure of fireworks
6. Appeals
7. Offences and penalties
8. Serving of notices and other documents
9. Conflict between legislation
10. Repeal of by-laws
11. Short Title
12. Operative date

1. INTERPRETATION

In this by-law, the English text prevails in the event of any conflict with the Afrikaans text, and unless the context indicates otherwise –

“approval”, means an approval given by the Theewaterskloof Municipality, or an authorized official on behalf of the Theewaterskloof Municipality, to discharge fireworks, and **“approve”** has a similar meaning;

“authorized official”, means a police officer as contemplated in terms of the South African Police Services Act, 1995 (Act No 69 van 1995), as amended, or any peace officer authorized in terms of section 334 of the Criminal Procedures Act, 1977 (Act No 51 of 1977), as amended, or any employee of the Theewaterskloof Municipality, who is authorized by the Theewaterskloof Municipality to enforce the provisions of this by-law;

“**chief inspector**”, means the Chief Inspector of Explosives, as appointed by the responsible minister, in terms of section 4(1) of the Explosives Act, 2003 (Act No 15 of 2003), as amended;

“**designated place**”, means a place specifically designated in terms of section 4 of this by-law as a suitable place, where fireworks may be discharged;

“**fireworks**”, means any fireworks as contemplated in the definition of explosives, as included in the Explosives Act, 2003 (Act No 15 of 2003), as amended, which are –

- (a) manufactured for purpose of amusement and entertainment; and
- (b) divided in categories, as may be described, and shall include any article or item or similar product, which is generally considered to be fireworks;

“**Municipality**”, means the Theewaterskloof Municipality, and includes reference to any duly delegated and / or appointed officials and / or service providers in terms of service level agreements of the Theewaterskloof Municipality;

“**newspaper**”, means any newspaper registered as newspaper, and
“**newspapers**” has a similar meaning;

“**public place**”, means any premises or property or land, under the control of the Theewaterskloof Municipality, to which the public have access, and includes, but are not restricted to: any square; building; park; recreational area; sports grounds; open space; nature reserve; municipal street, alley or road reserve; public road; parking area, municipal commonage; unused, used, build-up or vacant municipal land; or a cemetery;

“**public road**”, means any public road as referred to in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996), as amended, and includes any municipal road, alley or road reserve;

“**peace officer**”, means a peace officer as contemplated in section 1 of the Criminal Procedures Act, 1977 (Act No 51 of 1977), as amended, and the persons authorized by the Theewaterskloof Municipality to enforce the provisions of this by-law;

“**suitable premises**”, means a premises which comply to pre-determined safety and environmental requirements, for the discharge of fireworks and the presentation of firework displays

2. APPLICATION

- (1) Reference to any legislation in this by-law, shall be considered for purpose of this by-law, to be reference to the legislation as applicable on the date of promulgation of this by-law, or as amended from time to time.

- (2) When any stipulation of this by-law, is in conflict with any other by-law of the Municipality, which contain stipulations on the control of fireworks, the stipulations of this by-law shall prevail.

3. DESIGNATION OF PLACES AND CONDITIONS FOR THE DISCHARGE OF FIREWORKS

- (1) The Municipality may designate any public place or public road, or portions thereof, within the area of jurisdiction of the Municipality, as a suitable place which comply with pre-determined safety and environmental requirements, to discharge fireworks from.
- (2) The Municipality may, on application from any property owner, private person or institution, and with the consent from the owner or legal occupant of any suitable premises or public place, designate such premises as a suitable place which comply to pre-determined safety and environmental requirements, to discharge fireworks from.
- (3) The places designate in terms of subsections 3(1) and 3(2) of this by-law, or any amendment thereto, shall be made public by the Municipality, by means of a notice published in a registered newspaper and a notice posted on the official notice board of the Municipality, indicating the designated places where fireworks may be discharged from.
- (4) The Municipality may dictate conditions in terms of the dates, times and hours, when fireworks may be discharged in a designated area, or any other conditions stipulating the methods that may be used to discharge fireworks or the type of fireworks that shall be allowed.

4. DISCHARGING OF FIREWORKS

- (1) No person shall discharge any fireworks in any other place, but a place designated for the discharge of fireworks by the Municipality, in terms of subsections 3(1) and 3(2) of this by-law.
- (2) No person shall be allowed to present a public fireworks display on any premises, without a written authorization from the Chief Inspector of Explosives and the Municipality.
- (3) The discharge of emergency flares as part of a fireworks display shall be prohibited, and emergency flares may only be discharged in emergency situations, as part of an accepted emergency protocol.
- (4) No person shall be allowed to release any "Chinese lanterns" in the area of jurisdiction of the Municipality.

5. SEIZURE OF FIREWORKS

Any fireworks which are used or discharged without authorization, or which are found in the possession of persons in violation of section 4 of this by-law, may be seized and be disposed of in terms of the stipulations with regard to the seizure and disposal of goods of the Criminal Procedures Act, 1977 (Act No 51 of 1977), as amended.

6. APPEALS

A person whose rights are affected by a decision of the Municipality in terms of any delegated powers, may appeal against such a decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), as amended, by giving written notice of the appeal against the decision and the reasons for the appeal to the Municipal Manager, within twenty-one (21) days of the date of the notification of the decision.

7. OFFENCES AND PENALTIES

Any person who -

- (a) fails to comply to the instructions of an authorized official issued in terms of this by-law or a notice posted on a notice board;
- (b) fails to comply with any notice served in terms of this by-law;
- (c) contravenes any provision of this by-law; or
- (d) deliberately obstructs an authorized official in the execution of his or her duties in terms of this by-law,

is guilty of an offence and is liable on conviction, for -

- (i) a fine or imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment;
- (ii) in the case of a successive or continuing offence, to an additional fine or additional period of imprisonment, or such additional imprisonment without the option of a fine, or to both such additional fine and such additional imprisonment, for every day such offence continues; and
- (iii) any further amount as an order of court for costs, equal to any costs and expenses, deemed by the Court, to have been incurred by the Municipality as a result of such contraventions.

8. SERVING OF NOTICES AND OTHER DOCUMENTS

- (1) A notice, instruction, letter of demand, or other document issued by the Municipality in terms of this by-law is deemed to be duly issued when a duly delegated official of the Municipality has signed it.
- (2) Any notice, instruction, letter of demand, or other document that is served on a person in terms of this by-law, is regarded as having been duly and effectively 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 of South Africa, with a person apparently older than 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 of South Africa, and proof of the posting thereof is provided;
 - (d) if that person's address in the Republic of South Africa is unknown, when it has been served on that person's agent or representative in the Republic of South Africa, in a manner as provided in subsections 8(2)(a), 8(2)(b) or 8(2)(c) of this by-law;
 - (e) if that person's address and agent or representative in the Republic of South Africa is unknown, when it has been posted in a conspicuous place on the property or premises to which it relates; or
 - (f) in the event of a body corporate, when it has been delivered at the Registered office or the business premises of the body corporate.
- (3) When any notice, instruction, letter of demand, or other document is served on a person in terms of this by-law, it is sufficient for purpose of the serving of the notice, instruction, letter of demand, or other document, to describe the person in the notice, instruction, letter of demand or other document, as the owner, occupant, or holder of the property or rights in question, and it is not a requirement to name that person.
- (4) A notice, instruction, letter of demand, or other document shall for purpose of authentication, be properly signed by the Municipality.

9. CONFLICT BETWEEN LEGISLATION

When any stipulation of this by-law, is in conflict with national and provincial legislation or regulations, the national and provincial legislation or regulations shall prevail.

10. 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.

11. SHORT TITLE

This by-law shall be called the Control of Fireworks By-law of the Theewaterskloof Municipality.

12. OPERATIVE DATE

This by-law shall take effect on the date of publication.

MUNISIPALITEIT VAN THEEWATERSKLOOF

VERORDENING INSAKE DIE BEHEER VAN VUURWERKE

Krakens artikel 156 van die Grondwet van die Republiek van Suid-Afrika, 1996 verorden die Munisipale Raad van die Munisipaliteit van Theewaterskloof hiermee as volg:

AANHEF

Die Munisipaliteit het 'n plig om 'n veilige en gesonde werk- en leefomgewing vir die inwoners van die Munisipaliteit van Theewaterskloof te skep, en hierdie verordening is bedoel om die afvuur van vuurwerke te beheer, met die oogmerk om mens en eiendom te beveilig en die impak daarvan op diere en troeteldiere te beperk.

INHOUDSOPGAWE

1. Interpretasie
2. Toepassing
3. Aanwysing van plekke en voorwaardes vir die afvuur van vuurwerke
4. Afvuur van vuurwerke
5. Beslaglegging op vuurwerke
6. Appèlle
7. Strafbepalings
8. Bediening van kennisgewings en ander dokumente
9. Teenstrydighede met ander wetgewing
10. Herroeping van verordeninge
11. Kort titel
12. Inwerkingtreding

1. INTERPRETASIE

In hierdie verordening, geld die Engelse teks in die geval van enige teenstrydigheid met die Afrikaanse teks, en tensy dit uit die samehang anders blyk, beteken -

“aangewese gebied”, 'n plek as sodanig aangewys ingevolge artikel 4 van hierdie verordening as geskikte plek, vir die afvuur van vuurwerke;

“gemagtigde beampte”, 'n polisiebeamptes soos beoog in die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet 68 van 1995), soos gewysig, of enige vredesbeampte gemagtig ingevolge artikel 334 van die Strafproseswet, 1977 (Wet No 51 van 1977), soos gewysig, of enige beampte van die Munisipaliteit van Theewaterskloof wat gemagtig is deur die Munisipaliteit van Theewaterskloof om die bepalinge van hierdie verordening af te dwing;

“geskikte perseel”, ‘n perseel wat aan die gestelde veiligheids en omgewingsvereistes voldoen, om gebruik te word vir die afvuur van vuurwerke en die hou van vuurwerkvertonings;

“goedkeuring”, ‘n goedkeuring verleen deur die Munisipaliteit van Theewaterskloof, met inbegrip van ‘n gemagtigde beampte van die Munisipaliteit van Theewaterskloof, vir die afvuur van vuurwerke, en **“goedkeur”** het ‘n ooreenstemmende betekenis;

“hoofinspekteur”, die Hoofinspekteur van Plofstowwe, aangestel deur die verantwoordelike Minister, ingevolge artikel 4(1) van die Wet op Plofstowwe, 2003 (Wet No 15 van 2003), soos gewysig;

“Munisipaliteit”, die Munisipaliteit van Theewaterskloof, wat insluit enige verwysing na behoorlike gemagtigde en / of aangestelde beamptes en / of diensverskaffers in terme van diensleweringooreenkomste van die Munisipaliteit van Theewaterskloof;

“nuusblad”, wat insluit **“nuusblaaië”**, enige koerant wat as nuusblad geregistreer is;

“openbare plek”, enige perseel of eiendom of grond waartoe die publiek toegang het, wat insluit, maar nie beperk is tot, enige plein; gebou; park; ontspanningsgebied; sportgronde; oop ruimte; reservaat; munisipale straat of steeg of straatreserwe; openbare pad; parkeerarea; munisipale meent; ongebruikte, gebruikte, beboude of onbeboude munisipale grond; of ‘n begraafplaas, waaroor die Munisipaliteit van Theewaterskloof jurisdiksie het;

“openbare pad”, wat insluit enige munisipale straat of steeg of padreserwe, enige openbare pad, soos bedoel in artikel 1 van die Nasionale Padverkeerswet, 1996 (Wet No 93 van 1996), soos gewysig;

“vredesbeampte”, ‘n vredesbeampte, soos omskryf in artikel 1 van die Strafproseswet, 1977 (Wet No 51 van 1977), soos gewysig, en die persone deur die Munisipaliteit van Theewaterskloof gemagtig om die bepalings van hierdie verordening toe te pas; en

“vuurwerke”, enige vuurwerke soos bedoel in die woordoms krywing van plofstowwe, soos vervat in die Wet op Plofstowwe, 2003 (Wet No 15 van 2003), soos gewysig, wat –
(a) vervaardig word met die oog op pret of vermaak; en
(b) verdeel word in sodanige klasse, as wat moontlik voorgeskryf mag word, en sal enige artikel of item insluit wat algemeen as ‘n vuurwerk of soortgelyke produk beskou en gebruik kan word.

2. TOEPASSING

- (1) Vir die doel van hierdie verordening, sal 'n verwysing na enige wetgewing geag word as 'n verwysing na die toepassing daarvan op die datum van afkondiging van hierdie verordening, en soos van tyd tot tyd gewysig.
- (2) Indien daar konflik tussen enige ander verordeninge van die Munisipaliteit, wat bepalings bevat wat vuurwerke reguleer, en hierdie verordening ontstaan, sal die bepalings van hierdie verordening geld.

3. AANWYS VAN PLEKKE EN VOORWAARDES VIR DIE AFVUUR VAN VUURWERKE

- (1) Die Munisipaliteit kan enige openbare plek of openbare pad of enige gedeeltes daarvan, binne die gebied van jurisdiksie van die Munisipaliteit, aanwys as 'n geskikte perseel wat aan die gestelde veiligheids en omgewingsvereistes voldoen, waar vuurwerke afgevuur mag word.
- (1) Die Munisipaliteit kan, op aansoek van enige grondeienaar, privaat persoon of instansie, en met instemming van die eienaar of wettige bewoner van enige geskikte private perseel of oop ruimte soos, sodanige perseel aanwys as 'n geskikte plek wat aan die gestelde veiligheids en omgewingsvereistes voldoen, waar vuurwerke afgevuur mag word.
- (2) Die lys plekke aangewys ingevolge subartikels 3(1) en 3(2), van hierdie verordening of enige wysiging daaraan, moet deur die Munisipaliteit bekend gemaak word, deur dit te publiseer in 'n geregistreerde nuusblad en te vertoon op die amptelike kennisgewingbord van die Munisipaliteit.
- (3) Die Munisipaliteit kan voorwaardes voorskryf ten opsigte van die datums, tye en ure waarop die afvuur van vuurwerke in enige aangewese gebied mag plaasvind, en kan ook verdere voorwaardes ten opsigte van die wyse van die afvuur of gebruik of tipe van vuurwerke voorskryf.

4. AFVUUR VAN VUURWERKE

- (1) Geen persoon mag enige vuurwerke afvuur buite 'n gebied, wat ingevolge subartikels 3(1) en 3(2) van hierdie verordening deur die Munisipaliteit aangewys is nie.
- (2) Geen persoon mag 'n openbare vuurwerkvertoning op enige perseel lewer sonder die skriftelike toestemming van die Hoofinspekteur van Plofstowwe en die Munisipaliteit nie.
- (3) Die afvuur van noodfakkels is slegs toelaatbaar in noodgevallen, waar die gebruik van sodanige noodfakkels 'n toelaatbare protokol is, en geen persoon mag noodfakkels afvuur as deel van 'n vuurwerke vertoning nie.

- (4) Geen persoon mag enige "Chinese lanterns" loslaat, in die gebied van jurisdiksie van die Munisipaliteit nie.

5. BESLAGLEGGING OP VUURWERKE

Beslag kan gelê word op enige vuurwerke, wat onwettige gebruik of afgevuur word, of wat in besit van persone gevind word met die oortreding van artikel 4 van hierdie verordening, en sodanige vuurwerke moet mee gehandel word ingevolge die toepaslike bepalings van die Strafproseswet, 1977 (Wet 51 No van 1977), soos gewysig, wat met beslaglegging en beskikking van goedere verband hou.

6. APPÈLLE

'n Persoon wie verontreg voel oor 'n besluit geneem deur die Munisipaliteit, ingevolge enige gedelegeerde magte, mag in terme van artikel 62 van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet No 32 van 2000), soos gewysig, teen sodanige besluit appèlleer, deur binne een-en-twintig (21) dae vanaf datum van kennisgewing van die besluit, skriftelike kennis aan die Munisipale Bestuurder te gee van die appèl en redes vir die appèl te verstrek.

7. STRAFBEPALINGS

'n Persoon wat -

- (a) in gebreke bly om te voldoen aan 'n gemagtigde beampte se instruksies, uitgereik ingevolge hierdie verordening, of 'n kennisgewing aangebring op 'n kennisgewingbord;
- (b) in gebreke bly om te voldoen aan enige kennisgewing uitgereik ingevolge hierdie verordening;
- (c) enige bepaling van hierdie verordening oortree; of
- (d) opsetlik 'n gemagtigde beampte in die uitvoering van sy of haar pligte ingevolge hierdie verordening verhinder,

is skuldig aan 'n oortreding en mag by skuldigbevinding -

- (i) 'n boete of gevangenisstraf of gevangenisstraf sonder die keuse van 'n boete, of beide sodanige boete en sodanige gevangenisstraf opgelê word;
- (ii) in geval van 'n voortdurende oortreding, 'n bykomende boete of bykomende termyn gevangenisstraf of tot sodanige bykomende gevangenisstraf sonder die keuse van 'n boete, of tot beide sodanige boete en gevangenisstraf, vir elke dag wat sodanige oortreding voortduur, opgelê word; en

- (iii) 'n verdere bedrag as kostebevel opgelê word, gelykstaande aan enige koste en / of uitgawes wat die Hof bevind deur die Munisipaliteit aangegaan was, as gevolg van sodanige oortreding.

8. BEDIENING VAN KENNISGEWINGS EN ANDER DOKUMENTE

- (1) 'n Kennisgewing, bevel, aanskrywing, of ander dokument, wat ingevolge hierdie verordening deur die Munisipaliteit uitgereik word, word geag behoorlik uitgereik te wees, indien 'n beampte wat deur die Munisipaliteit gemagtig is, dit onderteken het.
- (2) Wanneer dit nodig is om enige gemagtigde kennisgewing, bevel, aanskrywing of ander dokument te bedien op 'n persoon ingevolge hierdie verordening, word dit geag effektief en na behore aan sodanige persoon beteken te wees –
 - (a) wanneer dit persoonlik aan die persoon afgelewer is;
 - (b) wanneer dit by die persoon se plek van inwoning of besigheid in die Republiek van Suid-Afrika gelaat is, by 'n persoon wat duidelik ouer as sestien jaar is;
 - (c) wanneer dit gepos is per geregistreerde of gesertifiseerde pos aan die persoon se laaste bekende woon- of besigheidsadres in die Republiek van Suid-Afrika, en 'n erkenning van die versending verskaf word;
 - (d) indien die persoon se adres in die Republiek van Suid-Afrika onbekend is, wanneer dit aan die persoon se agent of verteenwoordiger in die Republiek van Suid-Afrika bedien is op so 'n manier, soos in subartikels 8(1)(a), 8(1)(b) of 8(1)(c) van hierdie verordening bepaal;
 - (e) indien die persoon se adres en agent in die Republiek van Suid-Afrika onbekend is, wanneer dit opsigtelik vertoon word op die vaste eiendom of perseel, indien enige, waarop dit betrekking het; of
 - (f) in die geval van 'n bestuursliggaam, wanneer dit by die geregistreerde kantoor of die sakeperseel van sodanige bestuursliggaam afgelewer word.
- (3) Wanneer enige kennisgewing, bevel, aanskrywing of ander dokument aan 'n persoon ingevolge hierdie verordening bedien moet word, is dit nie nodig om dit by name te noem nie, maar sal dit voldoende wees as die persoon daarin beskryf word as die eienaar, bewoner of houer van sodanige vaste eiendom of ander reg, wat ook al die geval mag wees.
- (4) 'n Bevel, kennisgewing of ander dokument wat waarmerking vereis, moet behoorlik deur die Munisipaliteit onderteken wees.

9. TEENSTRYDIGHEDE MET ANDER WETGEWING

In die geval van teenstrydigheid tussen enige bepaling van hierdie verordening, en nasionale en provinsiale wetgewing of regulasies, sal sodanige nasionale en provinsiale wetgewing of regulasies voorrang geniet.

10. HERROEPING VAN VERORDENINGE

Die bepalinge van enige ander verordeninge voorheen uitgevaardig deur die Munisipaliteit of deur enige van die afgeskafte munisipaliteite wat nou by die Munisipaliteit geïnkorporeer is, word hiermee herroep in soverre dit betrekking het op aangeleenthede waarvoor in hierdie verordening voorsiening gemaak word.

11. KORT TITEL

Hierdie verordening heet die Verordening insake die Beheer van Vuurwerke van die Munisipaliteit van Theewaterskloof,

12. INWERKINGTREDING

Hierdie verordening tree op datum van publikasie daarvan in werking.