

STANDARD OPERATING
PROCEDURE ON THE
IMPOUNDMENT OF GOODS AND
ANIMALS

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BACKGROUND

The City of Cape Town experiences challenges in enforcing its By-laws due to the fact that it does not have a Standard Operating Procedure dealing with the impounding of goods or animals. Various By-laws authorize officials to confiscate, remove or seize goods where transgressions of the law take place. This is however done in an ad hoc manner which exposes the City to various risks including litigation and claims for compensation to the value of the goods.

This has led to a culture of reluctance to enforce the laws which authorize the City to impound goods or animals.

The development of a Standard Operating Procedure dealing with the Impoundment of Goods and Animals will enable the various policing services in the City to act with confidence in impounding goods or animals. It will also mitigate the risks that the City is exposed to should impounding continue to take place in an ad hoc manner.

1. Definitions

“animal” - means poultry, horse, pony, mule, donkey, cattle, pig, sheep , goat, camel, reptile, dog, cat, other domestic animal, indigenous animal and any wild or exotic animal;

“authorised official” - means any law enforcement officer or any other person authorised to enforce the By-laws of the City of Cape Town;

“City” - means the City of Cape Town, a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998, or any structure or employee of the City acting in terms of delegated authority;

“goods” - means any item, equipment, music instrument, property or animal, displayed or presented for sale or otherwise used in contravention of any act, by law or other legislation;

“illegal trading” – means conducting an informal trading business without having obtained the required licence from the City;

“informal trading” – means the trading in goods and services by a person or enterprise, not registered or incorporated in terms of laws relating to business but, which has obtained a licence from the City to trade in the informal business sector; or is trading in terms of an informal trading plan in terms of the City’s by-law;

“nuisance” – includes but is not limited to an act or omission which is offensive, injurious or dangerous to health, or which materially interferes with the ordinary comfort, convenience, peace or quiet of the public or which adversely affects the public at large;

“poultry” – means any fowl, goose, ostrich, duck, pigeon, dove, turkey, muscovy, guinea-fowl, peacock or any other bird whether domesticated or wild;

“public place” – means – (a) any parking area, square, park, recreation ground, sports ground, sanitary lane, open space, beach, shopping centre on municipal land, unused or vacant municipal land or cemetery which has –

(i) in connection with any subdivision or layout of land into erven, lots or plots, been provided, reserved or set apart for use by the public or the owners or occupiers or such erven, lots or plots, whether or not it is shown on a general plan, plan of subdivision or diagram;

(ii) at any time been dedicated to the public;

(iii) been used without interruption by the public for a period of at least 30 years expiring after 31 December 1959; or

(iv) at any time been declared or rendered as such by the City or other competent authority;

(b) a public transportation motor vehicle, or

(c) but will not include public land that has been leased or otherwise alienated by the City;

and shall include a public road.

“public road” – means any road, street avenue or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes –

a) the verge of any such road, street, avenue or thoroughfare;

b) any bridge, ferry or drift traversed by any such road, street, avenue or thoroughfare; and

c) any other work or object forming part of or connected with or belonging to such road, street, avenue or thoroughfare.

2. Application of Standard Operating Procedure

This procedure binds the City, its Councillors, employees, agents and agencies insofar as they are performing a function for the City that is aligned to the activities and the outcomes identified in this document.

3. Objectives

The objectives of this Standard Operating Procedure are to:

- a) ensure that the by-laws of the City are adhered to;
- b) standardise the manner in which impounding of goods and animals takes place;
- c) formalise the procedural steps that have to be complied with before impounding goods and animals in terms of any by-law;
- d) mitigate the City's exposure to possible litigation;
- e) mitigate the City's exposure to possible claims for compensation; and
- f) recover costs.

4. Guidelines to consider prior to impoundment

- 4.1 The following factors will be considered leading up to possible impoundment of goods -
 - a) The nature and seriousness of the transgression leading to the possible impoundment and disposal of the goods;
 - b) The number and frequency of the complaints received relating to the same perpetrator;
 - c) The input of political office bearers in respect of the complaint in circumstances where repeated complaints are received;
 - d) Whether the situation giving rise to the complaint impacts on the safety, security or rights of others, including the general public;
 - e) Whether the situation giving rise to the complaint creates a possible threat to life and/or property; or
 - f) The offender's interventions, if any, undertaken to remedy the situation giving rise to the complaint, as well as his/her level of co-operation in relation to the complaint/s.
- 4.2 Operating Procedures detailing policy considerations that may have to be applied by the various policing services within the City of Cape Town when impounding goods in terms of the various by-laws granting the authority to impound goods, are set out in the Schedule to the Standard Operating Procedure.

5. Written Compliance Notice

- 5.1 A written compliance notice shall be issued by a Law Enforcement Officer mandated in terms of any by-law, to any person contravening a by-law.
- 5.2 A written compliance notice shall be issued with each complaint that is received, or for each transgression of a by-law.
- 5.3 The written compliance notice must state at least the following:
 - a) the By-law/s being contravened;
 - b) the section/s contravened by what actions;
 - c) what action is required in order to comply;

- d) fine issued;
 - e) what measures must be taken to rectify the contravention; and
 - f) time frames within which the offender must comply.
- 5.4 Failure to comply with the requirements of the compliance notice may result in prosecution of the offender and/or the seizure and impoundment of any goods related to the contravention of the By-law.
- 5.5 Prosecution of an offender in terms of subsection 5.2 shall include charges being laid for –
 - a) the action giving rise to the issuing of a first compliance notice, if any;
 - b) the action giving rise to a complaint following on the issuing of the first compliance notice; and
 - c) the offence of not complying with a legally issued compliance notice.

6. Compliance Period

- 6.1 Authorised officials shall, in circumstances other than what is set out in 6.2, allow the following time periods for offenders to comply with the instructions set out in compliance notices issued in terms of:
 - a) Animals By-law: immediate compliance;
 - b) Streets Public Places and Prevention of Noise Nuisance By-law:
 - i) Nuisance: immediate compliance
 - ii) Transport related: 24 hours
 - iii) Other: 24 hours
 - c) Informal Trading By-law: 24 hours
- 6.2 Compliance notices issued by the Metals Theft Unit must be complied with in a period of 48 hours.
- 6.3 Where the authorised official reasonably believes that the action or contravention constitutes a threat to life, property, health or peace he or she shall ensure immediate compliance.

7. Impounding of goods

- 7.1 An authorised official may impound goods whether on private or public land in, but not limited to, the following circumstances: -
 - a. where he or she reasonably suspects that goods are being used in contravention of a by-law;
 - b. where goods are being used in a manner that disturbs the peace, health, security or wellbeing of another;
 - c. where goods are being used, intended to be used or have been used in, or in connection with, the carrying on of the business of illegal trading;

- d. where the carrying on of such business is prohibited or restricted in terms of the City's by-laws;
- e. where there is a reasonable suspicion that a person is in possession of stolen goods;
- f. where goods are left unattended in or along a public road, public place or any other open space for a period of up to 24 hours;
- g. where animals are allowed to roam freely on a public road;
- h. where fish are caught and removed from the water contrary to the conditions of any required permit;
- i. where offending actions are repeated on a regular basis e.g. daily; and
- j. where complaints have been received about the same type of offending action or actions within the period of 24 hours;

whether or not such goods are in the possession or under the control of any other person at the time of such offending action and envisaged impoundment.

7.2 Subject to Sec 7(3), goods may only be impounded if a prior compliance notice has been served on the offender.

7.3 Where the authorised official is of the opinion that the transgression of the by-law:

- a) is of a serious nature;
- b) poses a threat to the health, well-being or peace of others; or
- c) causes an obstruction or hazard in a public road,

the authorised official may impound goods without a prior written compliance notice having been issued.

7.4 Costs relating to the lawful seizure, impoundment and storage of impounded goods shall be for the account of the offender.

7.5 Any person who hinders or obstructs an authorised official from performing any lawful tasks in terms of this Standard Operating Procedure and the relevant by-laws shall be prosecuted.

8. Identification of Goods

An authorised official exercising authority in terms of any by-law of the City of Cape Town to impound goods, shall issue to the offending party a receipt for any property removed and impounded. The receipt must indicate the following:

- a) An itemised list of all the property to be removed and impounded;
- b) The physical condition of the goods;
- c) The address where the impounded goods will be kept;
- d) The hours during which goods that have been impounded may be collected;
- e) The maximum period for storage of goods before they are disposed of;
- f) The conditions for the release of the impounded goods;
- g) The name and office number of a council official to whom any representation regarding the impoundment may be made;

- h) The date and time by when representation must be made;
- i) The terms and conditions relating to the sale of unclaimed goods, by public auction, where no payment (and/or representation) is received ;

9. Storage of Impounded Goods

- 9.1 Impounded goods shall be stored on property, belonging to the City, identified for purposes of storage.
- 9.2 Daily fees will be levied for storage of any impounded goods.
- 9.3 Should any impounded goods require specialised storage due to the nature of the goods, the City may utilise service providers to provide such specialised storage.
 - 9.3.1 The costs for specialised storage shall be paid by the owner of the goods as part of the fees and fines that are levied due to impoundment.
- 9.4 The physical condition of all impounded goods shall be documented in an effort to ensure that goods are returned to owners in the same physical condition that they were in when impounded.
- 9.5 The City shall however not be responsible for any damage caused to goods where a reasonable duty of care was exercised.

10. Disposal of Impounded Goods

- 10.1 An authorised official shall destroy or cause to destroy all perishable goods in terms of the prescribed procedures of Council for perishable goods..
- 10.2 The City may discard, sell or otherwise dispose of any goods that have not been claimed within ninety (90) days after the date of impoundment.
- 10.3 The selling of such goods will be done through public auction which shall be advertised in local newspapers.
- 10.4 Municipal officials and councillors, their spouses, relatives and acquaintances are prohibited from purchasing any impounded goods that are disposed of through auctioning.

11. Fees

- 11.1 Fees may be levied for:

- a) dismantling of any goods that may require dismantling;
- b) transportation of goods;
- c) storage of goods; and
- d) any other expense incurred by the Council during and/or due to impoundment.

11.2 Fees that are to be levied for the impounding, transportation and storage of goods shall be determined by Council and may be adjusted from time to time.

11.3 Fees and fines payable shall be paid at the Council cash office between the hours of 08h00 and 16h00 on Mondays to Fridays.

12. Return to Owner

12.1 Goods may be returned to the owner, or his or her representative, upon presentation of proof of payment of:

- a) all fees related to the impounding, transportation and storage of the goods; and
- b) any fines that may have been imposed prior to and/or during impoundment.

12.2 Owners, or their representatives can collect their impounded goods, during the hours, at the venue, indicated in the impoundment notice served on the offender. Proof of payment of all fines and fees relating to the impoundment must be presented.

12.3 Transportation and installation costs relating to the return of impounded goods back to the premises from which they were impounded shall be for the cost of the owner of such goods.

12.4 Monies payable by Council to service providers for specialised services rendered shall be factored into the determination of fines and fees to be paid by the owner of the goods.

12.5 Council may from time to time amend the fines and fees that are applicable when goods are impounded, transported and stored.

13. Use of Impounded Goods as evidence in Courts

13.1 The City may, where necessary, use any impounded goods in court as evidence.

13.2 The City may, upon written request from any other law enforcement agency, make impounded goods available to serve as evidence in court.

13.3 Law enforcement agencies requesting the release of goods to serve as evidence in court shall:

13.3.1 ensure that the goods are handled with proper duty of care; and

13.3.2 be responsible for any costs relating to transportation from and back to the storage facility, assembling or dismantling of goods.

14. Record Keeping

14.1 All relevant information relating to:

a) fines imposed prior to and at impoundment;

b) fees levied during impoundment, transportation and storage of the goods; and

c) expenses incurred by the City due to service providers being utilised in the dismantling, impoundment and storage of goods,

shall be provided to the relevant municipal storage depot listed in the impoundment notice.

14.2 A special data base shall be created for storing information relating to impounded goods.

14.3 The data base shall, subject to clauses 14.4 and 14.5, be readily available to all officials that may be tasked with the release of impounded goods.

14.4 Only dedicated officials shall be permitted to amend the data base.

14.5 All other officials shall have read only access to the data base.

14.6 Information contained on the data base shall be utilised in determining the exact fines and fees payable before goods may be released.

14.7 Digital photographs shall be taken of all impounded goods.

15. Forfeiture

15.1 Subject to clause 15.2 any goods not collected during the 90 day period shall be forfeited to the City.

15.2 Where goods are:

a) to be used by the City as evidence; or

b) where a written request was received by another law enforcement agency,

the 90 day maximum storage period shall not apply.

15.3 Where goods are used as evidence in courts, the goods shall be stored until released by the courts.

- 15.4 Where impounded goods are released by the court, the court shall decide on which of the fees and fines will be payable by the offender.

16. Duty of Care when Handling Goods

- 16.1 Officials of the City must, when exercising any function or performing any duty in relation to impoundment of goods in terms of any by-law of the City, exercise duty of care when handling impounded goods.
- 16.2 Officials of the City must take reasonable steps to prevent any damage to impounded goods.

17. Service Providers

- 17.1 The City may utilise service providers to assist in the dismantling, transportation and storage of specialised equipment that may be impounded.
- 17.2 Service Providers performing any duty or function on behalf of the City shall act in a manner that displays duty of care when dealing with impounded goods.

18. Vehicles or equipment needed.

- 18.1 City vehicles must, as far as is practicably possible, be used for the transportation of impounded goods and animals.
- 18.2 The City may procure the use of specialised services and vehicles when required.