

Bergvriër, South Africa

Public Nuisances and the Keeping of Animals

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Public Nuisances and the Keeping of Animals

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Bergrivier South Africa

Public Nuisances and the Keeping of Animals By-law, 2021

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Under the provisions of section 156 of the [Constitution of the Republic of South Africa, 1996](#), the Bergrivier Municipality enacts as follows:—

1. Definitions

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

"**agent**", in relation to the owner of a property, means a person appointed by the owner of the property—

- (a) to receive rental or other payments in respect of the property on behalf of the owner; or
- (b) to make payments in respect of the property on behalf of the owner;

"**animal**" means any equine, bovine, sheep, goat, poultry, camel, dog, cat or other domestic animal or bird, or any wild animal or reptile which is in captivity or under the control of a person, or insects such as, but not limited to, bees, which is kept or under control of a person, but excluding any pet;

"**bird**" means a pigeon, peafowl, pheasant, partridge, canary, budgerigar, parrot, ostrich and any other domesticated bird or wild bird which is in captivity or under control of a person;

"**breeder**" means the owner of a breeding female animal at the time of natural or artificial conception or at the birth of progeny;

"**cattery**" means any establishment where cats are bred or boarded;

"**district municipality**" means the West Coast 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;

"**drunk**" means a person who, by reason of the alcohol which he or she has consumed, has lost control of his or her mental or physical faculties, or both, to such an extent as to render him or her incapable of comporting him- or herself, or of performing any act in which he or she is engaged, with safety to him- or herself or with that regard to the rights of others which the law demands;

"**kennel**" means any establishment that has as its business the breeding, training or boarding of dogs and includes pounds whether operated by the State or otherwise;

"**municipality**" means the Bergrivier 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 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;

"**municipal manager**" is the person appointed by the municipality in terms of section 54A of the Municipal Systems [Act, 32 of 2000](#), and includes a person—

- (a) acting in such position; and

- (b) to whom the municipal manager has delegated any power, function or responsibility;

"owner"—

- (a) in relation to an animal, includes the person having the possession, charge, custody or control of such animal;
- (b) in relation to public nuisances contemplated in Part 1 of this by-law—
- (i) a person in whom the legal title to a premises is vested;
 - (ii) in the case of property being occupied in terms of a lease agreement or otherwise, the tenant or occupier of such property;
 - (iii) in cases where the person in whose name property is registered is insolvent or deceased, or insane or whose estate has been designated for profit of his creditors, the person in whom the administration of the property is vested as trustee, executor, curator or proxy or administrator;
 - (iv) in cases where the owner as described above is absent, the agent or person who receives the rental of the relevant property; and
 - (v) in any case where the property is inhabited in terms of a servitude or similar right, the inhabitant of such property.

"pet" means a domestic or tamed animal kept for companionship or pleasure;

"pet parlour" means an establishment where pets are groomed;

"pet shop" means an establishment where pets are kept for trading purposes;

"poultry" means any fowl, goose, ostrich, duck, pigeon, dove, turkey, muscovy duck, guinea-fowl, peacock or peahen or bird whether domesticated or wild;

"premises" means—

- (a) land or a portion of land, including a public place, whether or not a building or structure has been constructed or erected on such land or portion thereof; or
- (b) a building, structure, tent or caravan and the land on which it is situated and includes any vehicle, carriage, ship or boat;

"public nuisance" means any act or omission or condition on any premises or public place, including any building, structure or growth thereon, which is offensive or dangerous, or which materially interferes with the ordinary comfort, convenience, peace or quiet of other people or which adversely affects the safety of people, and "nuisance" has the same meaning;

"public place" means any land, square, building, park, recreation ground, beach, nature reserve or open space which:

- (a) is vested in the municipality;
- (b) the public has the right to use; or
- (c) is shown on a general plan of a township filed in a deeds registry or a Surveyor-General's office and has been provided for or reserved for the use of the public or the owners of erven in such township;

"responsible authority" means the Bergrivier Municipality or any national or provincial department that may in terms of its powers and functions impose conditions or restrictions in respect of the keeping of animals;

"street" means any street, road, cycle path, thoroughfare or any other place, including—

- (a) the verge of any such road, street or thoroughfare;
- (b) any footpath, sidewalk or similar pedestrian portion of a road reserve;

- (c) any bridge, ferry or drift traversed by any such road, street or thoroughfare;
 - (d) any other object belonging to such road, street or thoroughfare, which has at any time been—
 - (i) dedicated to the public;
 - (ii) used without interruption by the public for a period of at least thirty years;
 - (iii) declared or rendered such by the municipality or other competent authority, or
 - (iv) constructed by a local authority, and
 - (v) any land, with or without buildings or structures thereon, which is shown as a street on—
 - (aa) any plan of subdivision or diagram approved by the municipality or other competent authority and acted upon, or
 - (bb) any general plan as defined in the Land Survey Act, 1972, registered or filed in a deeds registry or Surveyor General's office;
- unless such land is on such plan or diagram described as a private street;

"structure" means any container, stable, shed, pigsty, kraal, aviary, paddock, poultry house, enclosure, loft or building used for human shelter, business purposes or the keeping or enclosing of animals.

2. Objectives and application of by-law

- (1) The municipality, being 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 Bergrivier area by fostering an environment in which the public in general may enjoy peaceful and harmonious living conditions.
- (2) Sections 4(1), 14(1), 15(1), and 21(1) do not apply to—
 - (a) premises which are legally used for *bona fide* agricultural purposes; or
 - (b) premises identified by the municipality where the keeping of animals or the operation of pet parlours, pet shops or catteries and kennels is permitted and indicated as such in an approved spatial development framework and zoning scheme.
- (3) A person who keeps animals on premises contemplated in subsection (2) is not exempt from the provisions relating to the inception or bringing about of a public nuisance.

Chapter 1 General provisions relating to public nuisances

3. Behaviour and conduct

- (1) Despite the provisions of any other by-law, no person may—
 - (a) do work on or use any premises in such a manner that it interferes with the convenience or comfort of other people or that it becomes a source of danger to any person;
 - (b) subject to any approval in terms of the relevant Town Planning Scheme Regulations, carry on any trade, business, profession or hobby which causes discomfort or annoyance to other people;
 - (c) deposit, leave, spill, drop or place any fruit or vegetable peels, broken bottles, glass, refuse, building rubble, garden refuse or waste which is offensive or likely to cause annoyance, danger or injury to persons;

- (d) allow the fencing of any premises to fall into a state of disrepair or to become unsightly or dilapidated;
 - (e) allow any building or structure or any portion thereof to fall into a dilapidated, neglected or unsightly state;
 - (f) disturb the comfort, convenience, peace or quiet of other people by the use of electrical appliances or machinery whether malfunctioning or not;
 - (g) defoul, misuse or damage public toilets or any other public facility or installation;
 - (h) carry or convey in any street or public place, any objectionable material or waste, which is or may become offensive or dangerous, unless such material or waste is suitably covered;
 - (i) allow any erf to be overgrown to such an extent that it may be used as a shelter by vagrants, wild animals or vermin or may threaten the safety of any member of the community;
 - (j) erect, or allow to be erected, or use on any premises any structure in a manner that causes a nuisance to people;
 - (k) by an action, directly or indirectly, allow that a nuisance be created or continued;
 - (l) bathe or wash him- or herself or any animal, article or clothing in a public stream, pool, water trough, hydrant, fountain or at any place which has not been set aside by the municipality for such purpose;
 - (m) at any time disturb the public peace by making unseemly noises in any manner whatsoever;
 - (n) cause a nuisance by—
 - (i) loitering in any street or public place;
 - (ii) being drunk or under the influence of any intoxicating substances;
 - (iii) soliciting or importuning any person for the purposes of prostitution or any other immoral act;
 - (iv) continuing to beg from a person or closely follow a person after such person has given a negative response to such begging;
 - (v) playing loud music or the use of music instruments causing excessive noise on any premises;
 - (o) advertise wares or services by means of any megaphone, loudspeaker, or similar device or by insistent shouting, striking of gongs, blowing of horns or ringing of bells without the written permission of the municipality;
 - (p) in any street or public place use any abusive or threatening language;
 - (q) cleanse or wash any vehicle or part in any street or public place;
 - (r) discharge any fire-arm, airgun or air pistol on any premises except premises or land zoned for agricultural purposes and which does not form part of a general plan for a township.
- (2) (a) In the event of a contravention of [section 3\(1\)\(a\) to \(m\)](#), [\(n\)\(v\)](#) and [\(o\)](#), the municipality may issue a notice on the owner, occupier or alleged offender to terminate the action or to abate the nuisance created. In the event of non-compliance with such order and without prejudice to the municipality's right to prosecute, the municipality may take the necessary steps to remove the cause or source of the nuisance and any costs incurred in connection therewith may be recovered from the person responsible for the nuisance or the owner or occupier of the premises whether or not such owner or occupier is responsible therefor.
- (b) Where any private premises or land, whether vacant or developed, is used or occupied by unauthorised persons or where any of the materials or waste mentioned in subsection (1)

(c) are dumped or deposited on such premises, the municipality may serve a written notice on the owner or occupier requiring him or her to enclose or fence it in to its satisfaction by a date specified in the notice. Every such enclosure or fence must be so constructed that it will effectively prevent the entry of unauthorised persons and the dumping of materials and waste.

- (3) For the application of this by-law, any action or condition on any premises that endangers the safety of any person or property or which is untidy, annoying, troublesome, offensive or disturbing to the peace of other people, shall be considered a public nuisance.

Chapter 2

General provisions relating to keeping of animals

4. Permission to keep animals

- (1) No person may keep or permit to be kept on any premises any animals, excluding pets, without the written permission of the municipality.
- (2) Any person who applies for a permit to keep a wild animal must, when submitting an application contemplated in subsection (1), furnish the municipality with a captivity permit issued by the relevant Provincial Department.
- (3) The municipality may determine the number of bee hives, as well as the kind, number and gender of animals that may be kept and the areas within which the keeping of such animals will be prohibited.
- (4) In order to consider an application in terms of subsection (1), the municipality may obtain the input or comments of the owners or occupants of surrounding premises.

5. Plans for structures and management

The municipality may require from applicants who apply to keep animals that they must submit an application form and a detailed site plan according to specifications set by the municipality.

6. Consideration of application and imposition of conditions

- (1) The municipality may, after consideration of—
- (a) the input or comments obtained in terms of [section 4\(3\)](#);
 - (b) the location, geographical features or size of the premises in respect of which the application is submitted;
 - (c) the documents and site plans submitted in terms of [section 5](#); or
 - (d) any other information relating to the application including, but not limited to, grazing, fencing, availability of water, etc. refuse to grant consent or grant consent.
- (2) Where consent is refused, the municipality must furnish the applicant with the reasons for such refusal and at the same time advise him or her of the right of appeal in terms of [section 28](#).
- (3) Where consent is granted, the municipality may impose conditions.

7. Visibility of structures on premises

All structures in which animals are kept must be suitably screened from any street.

8. Wavering of requirements and withdrawal of authorisations

The municipality may, after considering conditions particular to the property and provided that no objection is received from the owners or occupants of surrounding premises—

- (a) waive any or all of the requirements of this part;
- (b) impose new conditions regarding the keeping of such animals; or
- (c) withdraw any consent granted in terms of [section 6\(3\)](#) if any of the conditions imposed are not adhered to, provided that the applicant be notified and given the opportunity to make representations as to why the consent should not be withdrawn.

9. Validity of authorisations

An authorisation to keep animals granted in terms of any by-law or regulation repealed, is deemed to have been granted in terms of this by-law.

10. Duties of owner or keeper of animal or pet

- (1) The owner or keeper of an animal or pet—
 - (a) may not cause or allow such animal or pet to interfere with the comfort, convenience, peace or quiet of other people;
 - (b) must provide such animal or pet with shelter, veterinary care, water and proper food and if on a leash or chain it must be at least one comma five metres in length;
 - (c) must maintain the premises on which such animal or pet is kept in good repair and in a neat condition in order to prevent the occurrence of a public nuisance;
 - (d) must exercise control over his or her animals or pets in order to prevent damage to property or gardens; and
 - (e) may not leave or allow any animal, excluding a pet, to be on any section of a street or public place or leave such animal in a place from where it may stray onto such section of a public road.
- (2) The owner or keeper of a pet, excluding a dog or cat, which is provided for in [section 19\(1\)](#) of this by-law, may not allow such pet to be on any section of a street or public place unless it is kept on a leash or is under physical control of the owner or keeper thereof.

11. Animals or pets kept in unsatisfactory manner

- (1) Whenever an animal or pet kept on any premises causes a public nuisance, or where such animal or pet is kept in contravention of any of the provisions of [section 10](#), the municipality may by written notice require the owner or occupier of such premises to remove the cause of and to abate such nuisance or to comply with any condition or instruction imposed in terms of subsection (2).
- (2) The municipality may prescribe the steps that need to be taken or the work that must be done to comply with the notice contemplated in terms of subsection (1).
- (3) Any activities undertaken by the owner in terms of a notice contemplated in subsection (1) will be for such owner or occupier's own account.
- (4) If a person fails to comply with a notice issued in terms of subsection (1) the municipality may take the steps required, including an order from a competent court for the seizure and impoundment of such animal or pet, and recover the cost thereof from such owner.

12. Euthanization and destruction of animals or pets

- (1) An authorised official may order the euthanization or destruction of an animal or pet found in or on a public street or public place, and which is—
 - (a) dangerous or ferocious; or
 - (b) injured to the extent that it would be humane to do so or diseased to the extent that it would be a danger to the wellbeing of any person.
- (2) An animal or pet to be euthanized in terms of subsection (1) must be euthanized by a registered veterinary surgeon or destroyed with such instruments or appliances and in such a manner as to inflict as little suffering as possible.

13. Hawking of animals or pets

No person may hawk an animal or pet in a street or public place or from a movable structure or vehicle.

Chapter 3

Provisions relating to keeping of dogs, cats and pets

Part 1 – General provisions relating to dogs, cats and pets

14. Number of dogs and cats

- (1) Subject to the provisions of [section 15](#), no person may, without the permission of the municipality, keep on any premises—
 - (a) more than two dogs; and
 - (b) more than two cats,
- (2) A person who keeps more than two dogs or two cats at the date of implementation of this by-law, may not replace a cat or dog that dies or is disposed of.
- (3) An application for permission in terms of subsection (1) must be submitted on an application form obtainable from the municipality and must contain an exposition of the breed, gender and number of dogs or cats applied for.
- (4) A restriction imposed under [section 17](#) on the number of animals that may be kept on premises does not apply for a period of 10 weeks after the birth of a litter from an animal kept in terms of a permit.

15. Breeders of dogs and cats

- (1) A breeder, of dogs or cats who wishes to keep more than two dogs or cats must obtain permission from the municipality.
- (2) The municipality may require the submission of plans and specifications of structures in which it is proposed to keep the dogs or cats as well as a site plan indicating all existing or proposed structures and fences on the premises.

16. Breeders of pets

- (1) A person who breeds pets must obtain the approval of the municipality.
- (2) The provisions of [section 15\(2\)](#) are with the necessary changes applicable to an application in terms of subsection (1).

17. Conditions and restrictions

The municipality's consent in terms of sections 4, 14(1), 15(1) and 16(1) may be subject to any conditions that the municipality may impose in consultation with another responsible authority.

18. Withdrawal of permission

- (1) Where a person contravenes or fails to adhere to a condition or restriction set in terms of [section 17](#), the municipality may, after hearing that person, withdraw its consent and may order the removal of animals from the premises for care and safekeeping by an animal welfare organisation or pound.
- (2) Any costs incurred by the municipality for the removal and safekeeping of animals in terms of subsection (1), will be recovered from the owner or keeper of such animals.

19. Dogs or cats in streets or public places

- (1) Subject to the provisions of the Public Amenities by-law, the owner or keeper of a dog or cat may not bring or allow it in a street or public place unless the dog is on a leash or the cat is under physical control.
- (2) Except in the event of a blind person being lead by a guide dog, a person in charge of a dog in a street or public place, must remove any faeces left by the dog by wrapping it in paper or plastic and disposing of it in a receptacle provided for litter or refuse.

Part 2 – Specific provisions relating to dogs

20. Control of dogs

- (1) No person may—
 - (a) permit a dog under his or her control to be in a street or public place without supervision;
 - (b) urge a dog to attack, worry or frighten any person or animal unless in self-defence;
 - (c) keep a dog if the premises is not adequately fenced to keep such dog inside when it is not on a leash; or
 - (d) permit a dog—
 - (i) to trespass on private property;
 - (ii) to constitute a hazard to traffic using any public road;
 - (iii) to constitute a source of danger or injury to a person outside the premises on which such dog is kept; or
 - (iv) to be a source of danger to employees of the municipality entering such premises for the purpose of carrying out their duties. A notice to the effect that a dog is kept must be displayed in a conspicuous place.
 - (e) keep any dog which interferes materially with the comfort, convenience, peace or quiet of neighbours by—
 - (i) barking, yelping, howling or whining;
 - (ii) charging any vehicles, animals, poultry, pigeons or persons outside any premises where it is kept; or
 - (iii) by behaving in any other manner.

- (2) The municipality may seize and impound a dog which is found in a street or public place in contravention with the provisions of this by-law.
- (3) A dog impounded in terms of subsection (3) must be released to the owner upon payment of a fee determined by the municipality.

Chapter 4

Dog kennels, catteries, pet shops and pet parlours

21. Permission to operate

- (1) No kennel, cattery, pet shop or pet parlour may be operated without the permission of and subject to conditions imposed by the municipality.
- (2) The person operating a kennel, cattery, pet shop or pet parlour may not conduct the business in such a manner so as to cause any nuisance or annoyance to other people.

Chapter 5

Co-operation between municipalities

22. Service delivery agreements

Whereas the keeping of animals on premises may cause a health nuisance, the municipality may enter into agreements with the district municipality with which legislative and executive powers are shared, in order to achieve optimal service delivery in terms of this by-law.

23. Powers of municipality in case of omission by district municipality

If the service delivery referred to in [section 22](#) is impeded by the refusal or omission by the district municipality to execute any of the arrangements envisaged in an agreement in terms of [section 22](#), the municipality may, subject to the principles of cooperative government proceed to give effect to such arrangement and any expenses incurred by the municipality in giving effect to such an arrangement may be recovered from the district municipality.

Chapter 6

General provisions

24. Right of entry and inspection

- (1) An authorised official may inspect any premises within the municipal area at a reasonable time in order to ensure compliance with the provisions of this by-law.
- (2) When entering premises in terms of subsection (1), the employee must on request by any person, who has an interest in the matter, identify him- or herself by producing his or her certificate of appointment issued by the municipality.
- (3) The authorised official may be accompanied by a person reasonably required to assist in conducting the inspection.
- (4) Any person who fails to give or refuses access to any authorised official, or obstructs or hinders him or her in the execution of his or her duties under this by-law, or who fails or refuses to give information that he or she may lawfully be required to give to such official, or who gives false or misleading information knowing it to be false or misleading, commits an offence.

25. Notice of compliance

- (1) An authorised official may issue a written notice to any person contravening the provisions of this by-law.
- (2) A notice in terms of subsection (1) must
 - (a) provide details of the provision of the by-law that has not been complied with;
 - (b) provide the owner, occupier, or other party a reasonable opportunity to respond to the allegations in the notice within a specified period;
 - (c) specify the steps that the owner, occupier or other person must take to rectify or remedy the failure;
 - (d) specify the period within which the owner, occupier or other person must take steps to rectify the failure; and
 - (e) indicate that the municipality may—
 - (i) if the notice is not complied with, undertake or allow the work that is necessary to rectify the failure to be undertaken and recover from the owner, occupier or other person the actual cost of such work; and
 - (ii) take any other action it deems necessary to ensure compliance.
- (3) A notice or document issued in terms of subsection (2) is valid until one of the following events occurs:
 - (a) it is carried out;
 - (b) it is cancelled by the authorised official or his or her delegatee; or
 - (c) the purpose for which it was issued, has lapsed.

26. Service of documents and process

- (1) Whenever a notice, order, demand or other document is authorised or required to be served on a person in terms of this by-law, it shall be deemed to have been effectively and sufficiently served on such person—
 - (a) when it has been delivered to him personally;
 - (b) when it has been left at his 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 his or her last known residential or business address in the Republic and an acknowledgement of the posting thereof is produced;
 - (d) if his or her address in the Republic is unknown, when it has been served on his or her agent or representative in the Republic in the manner provided by paragraph (a), (b) or (c); or
 - (e) if his or her address and agent in the Republic are unknown, when it has been posted in a conspicuous place on the immovable property (if any) to which it relates.
- (2) When any notice, order, demand or other document is authorised or required to be served on a person, it is not necessary to name him or her, but it will be sufficient if he or she is described as the owner, occupier or holder of a right.

27. Transitional provisions

Anything done under or in terms of any provision repealed by this by-law shall be deemed to have been done under the corresponding provisions of this by-law and the repeal in [section 33](#) shall not affect the validity of anything done under the by-law so repealed.

28. Appeal

A person whose rights are affected by a delegated decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems [Act, 32 of 2000](#), to the municipal manager within 21 days of the date of the notification of the decision.

29. Offences and penalties

- (1) It is an offence for any person to—
 - (a) threaten, resist, hinder or obstruct, or use foul, abusive or insulting language towards or at an authorised official in the exercise of his or her powers or execution of his or her duties;
 - (b) falsely pretend to be an official;
 - (c) furnish false or misleading information when requested to do so by an authorised official;
 - (d) fail to comply with a request of an authorised official; or
 - (e) fail to comply with a notice issued in terms of [section 25](#) of this by-law.
- (2) A person who contravenes any provision or fails to comply with any provision of sections [3](#), [4](#), [7](#), [10](#), [11](#), [13](#), [14](#), [15](#), [16](#), [19](#), [20](#), [21](#) and [29\(1\)](#) of this by-law commits an offence and shall on conviction be liable to—
 - (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.

30. Exemptions

Notwithstanding the provisions of this by-law, the municipality may exempt any person and class of persons from any or all of these requirements and may impose any other requirements it deems appropriate.

31. 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 a safe and healthy environment;
- (2) A liaison forum may consist of—
 - (a) a member or members of an interest group, or an affected person;

- (b) a designated official or officials of the municipality; and
 - (c) a councillor.
- (3) (a) the municipality may, when considering an application for an approval, or exemption certificate in terms of this by-law, request the input of a liaison forum.
- (b) a liaison forum or any person or persons contemplated in subsection (2) may, on own initiative submit an input to the municipality for consideration.

32. 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.

33. Repeal of by-laws

The Bergrivier Municipality By-law Relating to Public Nuisances and Public Nuisances Arising from the Keeping of Animals, published in *Provincial Gazette* No. 6675 dated 9 November 2009, is hereby repealed.

34. Short title and commencement

This by-law shall be known as the By-law Relating to Public Nuisances and the Keeping of Animals, 2021 and shall come into operation on the date of publication thereof in the *Provincial Gazette*.