



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

STANDARD OPERATING PROCEDURE FOR COMPLAINTS RELATING TO NOISE NUISANCES AND NOISE DISTURBANCES

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1 DEFINITIONS AND ABBREVIATIONS

“Authorised official” means a City employee responsible for carrying out any duty or function or exercising any power in terms of this SOP and includes –

- (a) a member of the Cape Town Metropolitan Police Department established in terms of section 64A of the South African Police Services Act, 1995 (Act No. 68 of 1995);
- (b) a traffic officer appointed in terms of section 3A of the National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (c) a law enforcement officer declared to be a peace officer in terms of section 334(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and
- (d) any other City employee delegated or person authorised to carry out or exercise the duty, function or power.

“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 (Act No. 117 of 1998), or any structure or employee of the City acting in terms of delegated authority.

“Designated Person” means a person designated or appointed by a local authority in terms of Regulation 9 of the Western Cape Noise Control Regulations.

“Office hours” refers to the period between 08h00 and 17h00, and excludes weekends and public holidays.

“SOP” means the Standard Operating Procedure for Complaints Relating to Noise Nuisances and Noise Disturbances.

“Streets, Public Places and the Prevention of Noise Nuisances By-law” means the City of Cape Town Metropolitan Municipality By-Law relating to Streets, Public Places and the Prevention of Noise Nuisances, as amended, per PN 6469/2007 on 28 September 2007 (as amended).

“Western Cape Noise Control Regulations” means the Western Cape Noise Control Regulations, promulgated in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), as amended, per PN 200/2013 on 20 June 2013.

2 PURPOSE

The purpose of this SOP is to clarify the interaction between the various pieces of legislation regulating complaints relating to noise nuisances and noise disturbances in the City in general, and particularly the City's *modus operandi* in relation to certain specific types of complaints with respect to sound generated by places of worship, late night entertainment and after hours noise complaints.

The generation of sound within the urban or residential environment can be an emotive issue. The City recognises that it is imperative to implement a standardised approach to dealing with all complaints relating to noise nuisances and noise disturbances in the City in a manner that upholds constitutional rights and responsibilities of every resident in a fair manner.

Apart from underpinning the implementation of a standardised approach to dealing with noise complaints in the City, this SOP also sets out the roles and responsibilities of Authorised Officials as first responders to complaints, the manner in which inspections takes place, dispute resolution mechanisms and guidelines for the issuing of notices for alleged offenders to appear in court.

3 SCOPE

This SOP applies to all relevant directorates within the City.

4 REGULATORY CONTEXT

- 4.1 The Constitution of the Republic of South Africa, 1996.
- 4.2 Environmental Health By-law, 2003 (as amended).
- 4.3 Streets Public Places and the Prevention of Noise Nuisance By-law, 2007 (as amended).
- 4.4 Coastal By-law, 2020.
- 4.5 Animal Keeping By-law, 2021.
- 4.6 The Civil Aviation Act, 13 of 2009.
- 4.7 The Environment Conservation Act, 73 of 1989.
- 4.8 The Criminal Procedure Act, 51 of 1977.
- 4.9 The National Road Traffic Act, 93 of 1996.
- 4.10 The Occupational Health and Safety Act, 85 of 1993.
- 4.11 Western Cape Noise Control Regulations, PN200/2013.

5 STANDARD PROCEDURE IN RESPECT OF ANY NOISE COMPLAINT MADE TO THE CITY DURING OFFICE HOURS

5.1 On receipt of any complaint relating to noise

5.1.1 The Authorised Official shall:

- (a) As the first respondent to noise complaints, acknowledge receipt of the complaint and investigate to determine whether there is a *prima facie* contravention of the relevant legislation (per regulatory context).
- (b) Establish from the information provided by the complainant and/or the on-site investigation, whether the noise generated appears to fall within the ambit of a 'Noise Disturbance', as defined by the Western Cape Noise Control Regulations, and if so, engage Environmental Health Officials accordingly. In so doing, a collaborative approach must be followed by the Authorised Official in dealing with the complaint.
- (c) Obtain an affidavit from the complainant/s setting out, *inter alia*:
 - i. The nature of the alleged noise nuisance;
 - ii. When the noise nuisance was first noticed/experienced;
 - iii. The duration of the noise nuisance;
 - iv. If applicable, how often the noise nuisance has occurred;
 - v. The origin of the noise nuisance;
 - vi. If known or obtainable, the name and address of the occupant/operator of the premises from which the noise nuisance originates; and
 - vii. An indication that the complainant desires prosecution in respect of the alleged noise nuisance.
- (d) Obtain other audio-visual evidence from the complainant or other witnesses;
- (e) Accept an affidavit in respect of evidence obtained and including in case docket;
- (f) An Authorised Official in consultation with Designated Person may conduct an appropriate inspection, enquiry or examination subject to the owner's consent or the court order in this regard;
- (g) Issue written instructions/Compliance Notice to cease or mitigate any noise nuisance determined to exist, within the period specified in the

instructions/Compliance Notice, or ensure compliance to an issued noise management plan, by –

- i. the persons causing the noise nuisance;
 - ii. who is responsible for the noise; or
 - iii. the owner, tenant, occupant or person in charge of the premises concerned.
- (h) Monitor and check compliance within the compliance period and obtain confirmation from the complainant with regard to compliance; and
- (i) In the event of non-compliance, issue a Written Notice in terms of Section 56 of the Criminal Procedure Act 51 of 1977 to Appear in Court including the charge of failing to comply with the written instructions or Compliance Notice or submit a case docket to the Municipal prosecutor to initiate a Summons in terms of Section 54 of the Criminal Procedure Act 51 of 1977 to Appear in court.

5.2 On receipt of a complaint requiring subjective assessment

5.2.1 On receipt of a complaint requiring subjective assessment, a Designated Person must:

- (a) Investigate the complaint;
- (b) determine by calculation or measurement if the decibel level of the noise meets the threshold of a noise disturbance in terms of South African National Standards SANS 10328:2008 and related protocols;
- (c) Apply the rating level except where the residual noise level differs by more than 10 dBA from the rating level; and
- (d) If a noise is a disturbing noise, issue written instructions to—
 - i. the person causing the noise or who is responsible for the noise; or
 - ii. the owner, tenant, occupant or person in charge of the premises concerned, to cease the disturbing noise or to mitigate it to a level conforming to the requirements of these regulations within the period specified in the instructions.

5.2.2 If a person is found to be responsible for or creating a disturbing noise, the City may hold that person liable for the cost of appointing a professional consultant

as contemplated in Western Cape Noise Control Regulation 9(c)(ii) to investigate the complaint.

- 5.2.3 Notwithstanding the above, nothing prevents the City from taking action against the perpetrators of noise which qualifies as both a Noise Nuisance and a Noise Disturbance, in terms of the relevant City of Cape Town By-Law and the Western Cape Noise Control Regulations, where deemed necessary or appropriate.

6 STANDARD PROCEDURE FOR DEALING WITH SPECIFIC TYPES OF NOISE COMPLAINTS

Notwithstanding what is set out above as the standard operating procedure to be applied by the City to noise complaints received by it, there are specific types of noise complaints that warrant alternative and/or sensitive processes to be applied in terms of investigation, resolution and/ or enforcement, and these are set out below:

6.1 Places of worship

6.1.1 In the case of complaints in respect of noise emanating from places of worship, operating within an appropriate zoning, these must be investigated by a Designated Person only, in terms of the Western Cape Noise Control Regulations, as set out in section 5.2 above, and not as a Noise Nuisance in terms of Section 3 of the City's Streets Public Places and the Prevention of Noise Nuisance By-Law.

6.1.2 Furthermore, in such circumstances, the Designated Person must:

- (a) Apply the additional amelioration and abatement procedure set out below in addition to the investigation and determination of the decibel level of the noise in terms of section 5.2 above;
- (b) Ensure sensitivity and care in consulting with the place of worship for an acceptable noise abatement plan that does not inhibit religious freedom. To this end the provisions of this SOP pertaining to alternative dispute resolution should be applied to complaints of this nature;
- (c) Obtain a completion time for such abatement plan to be completed;
- (d) Test and confirm the efficacy of the abatement measures; and
- (e) In instances of unwillingness to abate the noise, the Western Cape Noise Control Regulations will be applied, but the Designated Person will, in addition, inform the relevant place of worship of the right to submit an

application for exemption from the Western Cape Noise Control Regulations, which application must then be assessed in terms of the applicable process set out in section 12 therein.

6.2 Places of late-night entertainment:

6.2.1 In the case of a complaint lodged pertaining to noise emanating as a result of late-night entertainment, notwithstanding that same may be a Noise Disturbance too, an Authorised Official, must investigate it and may determine to deal with it under the relevant City of Cape Town By-law, on an immediate basis, and refer it for the consideration of any necessary actions in terms of the Western Cape Noise Control Regulations in due course as well.

6.3 After-hours noise complaints

6.3.1 Authorised Officials will be notified of call centre complaints.

6.3.2 Should the noise be of a technical nature, such as referred to in 5.2, the complaint should be referred to a Designated Person for further investigation.

7 DISPUTE RESOLUTION

7.1 The City has a responsibility to attend to matters of noise nuisance and noise disturbances in terms of the applicable laws. However, the City may, whilst not under an obligation to do so, assist a complainant and alleged noise nuisance or noise disturbance offender to resolve the issues between themselves amicably, i.e. through conversation or some form of neighbourly mediation, with or without the aid of any Chapter 9 state institutions.

7.2 To this end a Designated Person may invite any complainant and alleged offender to engage in a mediation process between themselves and/or the City, on such terms or conditions as they may agree or determine in order to resolve any dispute or complaint pertaining to noise in a mediated, amicable and non-litigious manner.

8 EXEMPTIONS

8.1 In terms of the Western Cape Noise Control Regulations, the City may exempt any person or venue, or type of venue, from any provision of the Western Cape Noise Control Regulations.

8.2 Applications will be assessed in accordance with the Western Cape Noise Control Regulations and, depending on the outcome, the applicant may be required to submit a Noise Impact Assessment and/ or a Noise Management Plan.

9 MONITORING, EVALUATION AND REVIEW

The effectiveness and efficiency of this SOP, and the implementation hereof, will be monitored and may be reviewed and updated as deemed necessary. The responsible departments should periodically engage to determine if amendments are required and the outcomes thereof must be reported accordingly.