

CITY OF CAPE TOWN

ANIMAL BY-LAW, 2008

PREAMBLE

WHEREAS old municipalities within the area of jurisdiction of the City of Cape Town have been disestablished to form one municipality with legislative and executive powers over all areas of such old municipalities;

WHEREAS there is a need to develop one piece of legislation to govern the control of animals including dogs, cats and working equines uniformly throughout the City;

WHEREAS the City has competence in terms of the Constitution of the Republic of South Africa to make and administer by-laws for the effective administration of the matters which it has the right to administer;

WHEREAS the City has the competence in terms of Part B of Schedule 5 of the Constitution relating to control of public nuisances, pounds, facilities for the accommodation, care and burial of animals, licensing of dogs, municipal roads, traffic and parking and has the competence in terms of Part B of Schedule 4 of the Constitution relating to municipal health services;

AND NOW THEREFORE, be it enacted by the Council of the City of Cape Town, as follows:

CHAPTER ONE**INTERPRETATION****Definitions**

1. In this By-law, unless the context otherwise indicates -

“adjoining and affected neighbour” means a neighbour whose property directly abuts the common boundary of the applicant’s premises or which is located opposite or diagonally opposite the applicant’s premises;

“agricultural property” means land zoned for agricultural use in terms of any of the Council’s town planning schemes or any other law;

“animal” means horse, pony, mule, donkey, cattle, pig sheep, goat, camel, reptile, dog, cat or other domestic animal, indigenous animal and other wild or exotic animal, but for the purposes of Chapter five, excludes dogs, cats and working equines to the extent that they are regulated separately in other Chapters;

“animal drawn vehicle” means a standard designed cart with swivel and shafts which is attached to the working equine by means of a harness;

“authorised official” means an officer authorised in terms of section 8 of the *Animals Protection Act, 1962* (Act No. 71 of 1962) and any official of the Council who has been authorised by the Council to enforce the provisions of this By-Law;

“carcass” means the remains of any animal or poultry;

“cat” means both a male and a female cat of any age, unless otherwise specified;

“cattery” means premises in or upon which-

- (a) boarding facilities for cats are provided; or
- (b) cats are bred for commercial purposes;

“City Manager” means a person appointed as a municipal manager of the City of Cape Town in terms of section 82 of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998);

“Council” means –

- (a) the Council of the City of Cape Town established by Provincial Notice No. 479 of 2000 issued in terms of section 12 of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998);
- (b) a successor in title;
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the *Local Government: Municipal Systems Act, 2000* (Act No. 32 of 2000); or
- (d) a service provider fulfilling a responsibility under this By-law assigned to it in terms of section 81(2) of the *Local Government: Municipal Systems Act, 2000* (Act No. 32 of 2000), or any other law;

“dog” means both a dog and a bitch of any age, unless otherwise specified;

“dwelling house” means a single building designed for use as a residence for a single family situated on premises containing not more than two such buildings;

“dwelling unit” means an inter-connected suite of rooms including a kitchen or scullery designed for occupation by a single family, other than a dwelling house, irrespective of whether such unit is a single building or forms part of a building containing two or more such units;

“guide dog” means a dog which has been trained to assist a blind or poor-sighted person and includes a service dog which has been trained to assist a person who is mentally or physically incapacitated;

“health nuisance” means any activity, condition, premises or thing which, on account of effluent, vapours, chemical effluvia, odours, noise, vibration, radiation, refuse, waste products, dirt, chemical or biochemical material, microbial infection, vermin, vegetation, overcrowding, lack of proper general hygiene, ventilation, lighting, design, situation or on account of any other cause or practise whatsoever, is / are in the opinion of the Executive Director: Health or a duly authorised Council employee potentially injurious or dangerous to health or which is /are offensive, including, without affecting the generality of the foregoing, any facility for the storage, distribution or handling of water that is likely to be used by man for domestic purposes or consumption, including such water itself, which is contaminated or polluted;

“kennels” means premises in or upon which –

- (a) boarding facilities for dogs are provided;
- (b) dogs are bred for commercial purposes;
- (c) dogs are kept for the purposes of being trained or hired out with or without handlers; or
- (d) dogs are kept for commercial security purposes;

“owner” in relation to a dog, cat or working equine includes any person having the possession, charge, custody or control of that dog, cat or working equine

“permit” means the written permission granted by the Council in terms of this By-law;

“person” includes any sphere of government, natural and juristic person;

“poultry” means any fowl, goose, ostrich, duck, pigeon, dove, turkey, muscovy, guinea-fowl, peacock and /or pea-hen or bird whether domesticated or wild;

“pound” means a place designated by the Council in terms of any law for the impounding, sale and destruction of animals;

“poundmaster” means a person who has been appointed by the Council to be in charge of a pound;

“premises” means any building, tent or any other structure, together with the land on which the same is situated and the adjoining land used in connection therewith and any land without buildings or tents, and includes any vehicle, conveyance, ship or boat;

“public place” and public street” means -

- (a) a public road;
- (b) 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 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 thirty years expiring after 31 December 1959; or
 - (iv) at any time been declared or rendered as such by the City or other competent authority; or
- (c) a public transportation motor vehicle,

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

“structure” means any stable, shed, pigsty, kraal, aviary, paddock, covering structure, poultry house, enclosure, run, loft or building, used for the keeping, housing or enclosing of animals and poultry; and

“working equine” means a horse, donkey, mule or ass that is fit for pulling an animal drawn vehicle used for financial gain.

CHAPTER TWO

DOGS

Restriction on number of dogs

2. (1) The Council may determine the number, kind and sex of dog that may be kept on any premises.

(2) In the absence of a determination made in terms of the provisions of subsection (1) and subject to the provisions of subsections (3) and (4), no person may keep more than –

- (a) two dogs, or allow more than two dogs, over the age of six months to be kept in or at a dwelling unit;
- (b) three dogs, or allow more than three dogs, over the age of six months to be kept in or at premises containing one or two dwelling houses;
- (c) six dogs, or allow more than six dogs, over the age of six months to be kept on an agricultural property; or
- (d) three dogs, or allow more than three dogs, over the age of six months to be kept on or at any other premises.

(3) Subsection (2) does not apply to any person who –

- (a) is the holder of a permit issued in terms of section 3 to keep a greater number of dogs;
- (b) is the holder of a permit to keep kennels;
- (c) is the owner or manager or is in charge of, a pet shop and who has written proof that all the dogs under the control of such owner or manager have been vaccinated against canine distemper, hepatitis, kennel cough and parvovirus;
- (d) is the owner or is in charge of premises where guide dogs are being kept or trained;
- (e) is the owner or manager of a veterinary clinic; or
- (f) any person who is in charge of dogs owned by the Metropolitan Police Department of the Council as specified in paragraph (a) of the definition of "Council", the South African Police Service or the South African Defence Force, and are kept for operational or breeding purposes.

(4) A person who has previously had a dog removed from his or her care or has a previous criminal conviction or civil judgment against him or her in respect of an

animal in his or her care, may not keep a dog, unless the Council determines otherwise.

Permits to keep dogs

3. (1) Any person who wants to keep a greater number of dogs on premises than the number permitted in terms of section 2(2), must apply to the Council for a permit.

(2) An application in terms of subsection (1) must be in writing on a prescribed form and must be accompanied by –

- (a) the prescribed fee;
- (b) documentary evidence that the applicant has given all adjoining and affected neighbours fourteen days notice of his or her intention to apply for a permit in terms of subsection (1) and invited all adjoining and affected neighbours to lodge with the applicant, during such period, in writing, any objection to, or representations relating to, the granting of the application;
- (c) a copy of any objection or representation lodged in terms of paragraph (b);

(3) The Council may require the applicant to provide any further information which it considers relevant to enable it to make an informed decision.

(4) The Council may refuse to consider an application in terms of subsection (1) in respect of which the provisions of subsection (2) have not been complied with or information contemplated in subsection (3), has not been furnished.

(5) The Council may only consider an application in terms of subsection (1) after receipt of a written report from an authorised official –

- (a) as to whether the dog for which the permit is required is likely to cause a public health hazard or the keeping of such dog may result in a contravention of section 5;
- (b) setting out the results of an inspection of the premises on which the dog concerned is being kept or is to be kept; and
- (c) as to whether the applicant has previously had a dog removed from his or her care or has a previous criminal conviction or civil judgment against him or her in respect of an animal in his or her care.

(6) The Council may refuse an application in terms of subsection (1) or approve it subject to any conditions aimed at reducing the risk of any public health hazard created by the dogs on the premises concerned occurring, continuing or recurring or to reduce such risk to a level acceptable to the Council.

(7) A person who has applied for a permit in terms of subsection (1) may not keep the number of dogs applied for pending the outcome of such application, in the absence of a permit.

(8) In respect of any application approved in terms of subsection (6), an authorised official must issue a permit on a prescribed form specifying every condition imposed by the Council.

(9) A permit is not transferable from one person to another or from the premises in respect of which it has been issued, to other premises.

Amendment, suspension and cancellation of permits

4. The Council may, after consideration of a report and recommendation of an authorised official or veterinary surgeon, by written notice to the holder of a permit contemplated in section 3 –

- (a) amend, suspend or cancel that permit if it is satisfied that failure to do so would result in –
 - (i) the creation or continuation of a public health hazard; or
 - (ii) a continued contravention of any provision of section 5;
- (b) with immediate effect amend, suspend or cancel that permit if such official is of the view that it is urgently necessary to do so to eliminate or reduce a significant risk to the public posed by a public health hazard or potential public health hazard.

Prohibitions relating to the keeping of dogs

5. No person shall -

- (a) permit any bitch on heat owned or kept by him or her to be in any public street or public place;
- (b) urge any dog to attack, worry or frighten any person or animal or through negligence fail to prevent any dog from attacking, worrying or frightening any person or animal, except where necessary for the defence of such first-mentioned person or his or her property or of any other person;
- (c) Keep any dog which causes damage to public property;
- (d) keep any dog the faeces of which he or she fails to remove regularly and dispose of suitably;
- (e) keep any dog which -
 - (i) by barking, yelping, howling or whining;

- (ii) by having acquired the habit of charging any vehicle, animals, poultry, pigeons or persons outside any premises where it is kept; or
 - (iii) by behaving in any other manner,
- causes a disturbance or nuisance to inhabitants of the neighbourhood; or
- (f) permit any dog owned or kept by him or her -
 - (i) to be in any public street or public place while suffering from mange or any other infectious or contagious disease;
 - (ii) which is ferocious, vicious or dangerous to be in any public street or public place, unless it is muzzled and held on a leash and under control;
 - (iii) to trespass on private property;
 - (iv) to constitute a hazard to traffic using any public street;
 - (v) to constitute or to his or her knowledge be likely to constitute a source of danger or injury to any person outside the premises on which such dog is kept; or
 - (vi) to be in any public street or public place except on a leash and under control unless the dog is in an area designated by the Council as a free running area.
 - (g) keep any dog which does not have on its collar or micro-chip a name, telephone number and physical address or reference to a society for the prevention of cruelty to animals or registered animal welfare organisation.

Prohibited behaviour in respect of dogs

6. (1) No person may provoke, harass or tease any dog.

(2) No person may terrify or cause stress or fear to any dog with fireworks or by any other means.

(3) Any person who

- (a) possesses, keeps, imports, buys, sells, trains, breeds or has under his or her control an animal for the purposes of fighting any other animal;

- (b) baits, provokes or incites any animal to attack another animal or to proceed with the fighting of another animal;
- (c) for financial gain or as a form of amusement promotes animal fights;
- (d) allows any of the acts referred to in paragraphs (a) to (c) to take place on any premises or place in his or her possession or under his or her charge or control;
- (e) owns, uses or controls any premises or place for the purpose or partly for the purpose of presenting animal fights on such premises or place or who acts or assists in the management of such premises or place, or who receives any consideration for the admission of any person to such premises or place; or
- (f) is present as a spectator at any premises or place where any of the acts referred to in paragraphs (b) to (e) is taking place or where preparations are being made for such acts,

is guilty of an offence and liable on conviction to a fine of R 20 000.00 (twenty thousand rand) or to imprisonment for a period not exceeding two years.

(4) In any prosecution it is presumed, unless the contrary is proved, that an animal that is found at any premises or place is the property or under the control of the owner of those premises or that place, or is the property or under the control of the person who uses or is in control of the premises or place.

Seizure, impounding and destruction of dogs

7. (1) An authorised official may seize and impound at a place appointed by the Council any dog which -

- (a) may be destroyed in terms of the provisions of subsection (10) or any other law;
- (b) in his or her opinion is suffering from mange or any other infectious or contagious disease;
- (c) in his or her opinion constitutes a hazard to traffic using any public street;
- (d) is at large and apparently without an owner;
- (e) is found in any public place or public street where such a dog is, in the opinion of the authorised official, not on a leash or under proper control, unless the dog is in an area designated by the Council as a free running area;
- (f) enters any premises while an authorised official is attempting to take it into custody; or

(g) is being kept in contravention of section 2 or section 5.

(2) Any person may on premises of which he or she is the owner or occupier, take into custody any dog found trespassing thereon or therein for the purpose of having it impounded.

(3) Notwithstanding the provisions of subsections (1) and (2), no person may take any dog into custody for the purpose of having it impounded if there are reasonable grounds to believe that the dog is a female dog with unweaned young, unless such dog and unweaned young are taken into custody together.

(4) Any person who has taken a dog into custody in terms of this section-

(a) must ensure that the dog is not ill-treated; and

(b) may, when the pound is closed, keep the dog in his or her custody until the pound re-opens.

(5) No person may free any dog which has been taken into custody, or is being kept in custody in terms of this section or which has been impounded.

(6) The Council shall keep a record of all dogs seized and impounded in terms of this By-law indicating the species, marks and distinguishing peculiarities (if any) of such dogs, as well as the last date for their release or otherwise, and such records shall be open for inspection by the public at the Council Offices during office hours.

(7) Any person may claim an impounded dog if he or she-

(a) satisfies the poundmaster that he or she is the owner or is otherwise entitled to the custody of the dog concerned;

(b) satisfies the poundmaster that releasing the dog into his or her custody will not result in any provision of section 2 or 5 being contravened; and

(c) pays to the poundmaster the prescribed fees and the amount of veterinary expenses, if any, incurred in respect of the dog.

(8) A dog impounded in terms of subsection (1), other than a dog so impounded in terms of subsection (1) (b), shall be released to the owner or person keeping such dog upon payment of the fee as fixed by the Council.

(9) A dog impounded in terms of subsection (1), other than a dog so impounded in terms of subsection (1)(b) , may be sold or destroyed after it has

been detained for not less than ten days unless it has been claimed and released in terms of subsection (7) or subsection (8).

(10) Notwithstanding the provisions of subsection (9), a dog which has been seized or impounded in terms of -

- (a) subsection (1)(b); or
- (b) any provision of this By-law or the provisions of any other law and which is found by the authorised official –
 - (i) to be suffering from any incurable, infectious or contagious disease, or to be badly injured; or
 - (ii) to be ferocious, vicious or dangerous,

may be destroyed forthwith.

(11) If an authorised official is of the opinion that a dog is a dog contemplated by the provisions of section 5, he or she may –

- (i) cause a notice to be served on the owner of such dog requiring such owner to take such steps as will effectively abate such nuisance and to establish to the satisfaction of the authorised official that such dog is being kept under proper control;
- (ii) impound the dog and deal with it in terms of this section, provided that such dog shall not be released to its owner unless such owner, within the period of ten days contemplated by section 7(9), provides the authorised official with satisfactory proof that such dog, if released to him or her, will not cause any further nuisance and will be kept under control.

(12) The destruction of any dog shall be by such painless method as may be approved by a veterinarian and shall take place under the supervision of an authorised official.

(13) The proceeds of any sale shall be used to defray all costs connected with such sale and the impounding of such dog.

(14) Neither the Council nor the authorised official nor any employee of the Council shall be liable for or in respect of any injury suffered or disease contracted by or damage caused to any dog as result of or during its seizure, impounding, detention, sale or destruction in terms of this By-law.

Duties of poundmaster

8. A poundmaster-

(a) (i) must keep the pound open between 08h00 and 16h30 from Monday to Friday and Saturday between 08h00 and 12h00 unless any such day is a public holiday;

(ii) may, notwithstanding the provisions of subparagraph (i), keep the pound open during such earlier or later hours as he considers necessary, subject to displaying an easily legible notice to that effect at the entrance to the pound.

(b) must accept, take charge of and impound any animal brought to the pound with a view to impounding it, during the hours when the pound is open and must, subject to the further provisions of this By-Law, detain that animal in the pound: Provided that the poundmaster may refuse to receive, or may release any animal if he or she reasonably believes that such animal was not lawfully taken into custody or impounded;

(c) must keep a register in which the following particulars of any animal are recorded:

- (i) the name of the authorised official or the name, residential address and telephone number of any other person who brought the animal to be impounded;
 - (ii) the time at which and date on which the animal was impounded;
 - (iii) the place where the animal was found immediately before it was taken into custody;
 - (iv) the date on which and the time at which the animal was taken into custody before being brought to the pound;
 - (v) the reason for impounding the animal;
 - (vi) a description of the animal indicating the estimated age, breed, sex, colour, markings and any injury found on the animal when the poundmaster accepted it;
 - (vii) whether the animal was released, sold or destroyed and the date and time of such release, sale or destruction;
 - (viii) the amount or money realised in respect of such release or sale;
 - (ix) the amount of veterinary expenses, if any, incurred in respect of the animal;
- (d) must ensure that the pound and all equipment used in connection with impounding animals are at all times kept in a clean condition and free from flies and other vermin, to the satisfaction of the Council's Executive Director: Health;
- (e) must ensure that every animal in the pound is properly fed and cared for;
- (f) must isolate any female animal on heat;
- (g) must take all reasonable steps to prevent fighting amongst animals in the pound;
- (h) must isolate any diseased animal from the healthy animals, have such animal attended to by a veterinarian and take all steps to recover the expenses incurred in this regard from the owner if the identity and address of the owner are known;
- (i) must take all necessary steps to have any animal destroyed as contemplated in this By-Law and recover any expenses incurred in this regard from the owner if the identity and address of the owner are known; and
- (j) must levy the prescribed fees for impoundment and daily holding fees in respect of any animal.

Fencing of property

9. No person shall keep a dog if his or her premises are not properly and adequately fenced to keep such dog inside when it is not on a leash unless the dog is confined to the premises in some other manner.

The rescue of stray dogs

10. A person who rescues a stray dog shall report the date and time of the rescue and a description of the dog to the Council within twenty four hours.

Dog shall not be a source of danger

11. (1) Any person who keeps a dog on any premises shall keep such dog in such a manner as not to be a source of danger to the Council's employees entering upon such premises for the purpose of carrying out their duties.

(2) A notice to the effect that a dog is being kept on such premises shall be displayed in a conspicuous place at each access point to the premises.

Removal of excrement

12. (1) If any dog defecates in any public street, public place or public road, any person in control of such dog, excluding a person assisted by a guide dog, shall forthwith remove the excrement, place it in a plastic or paper bag or wrapper and dispose of it in a receptacle provided for the deposit of litter or refuse, excluding a person who is assisted by a guide dog.

(2) No person shall walk a dog, other than a guide dog, in a public street, public place or public road, without carrying a sufficient number of plastic or paper bags or wrappers, within which to place the excrement of the dog, in the event of the dog defecating.

Sterilisation

13. (1) An authorised official may sterilize a dog should he or she deem it necessary, or on the request of the owner and the costs thereof may be recovered from the owner.

(2) No person, other than a person who has been granted permission by the Council to keep kennels, or the owner of a bitch registered by the Kennel Union of South Africa, shall keep a bitch other than a spayed bitch, provided that a person in possession of a bitch on the date of promulgation of this By-Law, may keep such bitch until it dies or is disposed of.

CHAPTER THREE

CATS

Restriction on number of cats

14. (1) The Council may determine the number, kind and sex of cat that may be kept on any premises.

(2) In the absence of a determination made in terms of the provisions of subsection (1) and subject to the provisions of subsections (3) and (4), no person may keep more than –

- (a) two cats, or allow more than two cats, over the age of six months to be kept in or at a dwelling unit;
- (b) four cats, or allow more than four cats, over the age of six months to be kept in or at premises containing one or two dwelling houses; or
- (c) six cats, or allow more than six cats, to be kept on an agricultural property.

(3) (a) The provisions of section 2 (3), except paragraphs (d), and (f) of subsection (3), read with the necessary changes apply.

(b) For the purpose of applying the provisions of section 2 (3) in terms of paragraph (a) –

- (i) paragraph (b) thereof is deemed to refer to a cattery; and
- (ii) paragraph (c) thereof is deemed to refer to cat flu and feline respiratory diseases.

(4) A person who has previously had a cat removed from his or her care or has a previous criminal conviction or civil judgment against him or her in respect of an animal in his or her care, may not keep a cat, unless the Council determines otherwise.

(5) The provisions of sections 3, 4 and 7, read with the necessary changes, apply in respect of cats.

Council's powers to sterilize cats

15. An authorised official may sterilize a cat should he or she deem it necessary, or on the request of the owner and the costs thereof may be recovered from the owner.

Taking cats into custody

16. (1) An authorised official or a person authorised thereto by a person, body or structure contemplated in paragraph (c) or (d) of the definition of Council may, for the purpose of having a cat impounded, take into custody any cat which is being kept in contravention of section 14.

(2) The provisions of section 7, read with the necessary changes, apply to the taking into custody of cats.

CHAPTER FOUR

WORKING EQUINES

Permits to keep working equines

17. (1) (a) Any owner who wants to put to work a working equine, must apply to the Council for a permit, in respect of such working equine.
(b) No more than one permit may be issued in respect of a working equine.

(2) An application in terms of subsection (1) must be in writing on a prescribed form and must be accompanied by –

- (a) the prescribed fee;
- (b) documentary evidence that the working equine is suitable to pull a animal drawn vehicle;

(3) The Council may require the applicant to provide any further information which it considers relevant to enable it to make an informed decision.

(4) The Council may refuse to consider an application in terms of subsection (1) in respect of which the provisions of subsection (2) have not been complied with or information contemplated in subsection (3), has not been furnished.

(5) The Council may only consider an application in terms of subsection (1) after receipt of a written report from an authorised official –

- (a) as to whether the working equine for which the permit is required is likely to cause a nuisance in a public place or its use may result in a contravention of section 19;
- (b) setting out the results of an inspection of the working equine and its working circumstances; and
- (c) as to whether the applicant has previously had a working equine removed from his or her care or has a previous criminal conviction or civil judgment against him or her in respect of an animal in his or her care.

(6) The Council may refuse an application in terms of subsection (1) or approve it subject to any conditions aimed at reducing the risk of nuisance in a public place occurring, continuing or recurring or to reduce such risk to a level acceptable to the Council.

(7) A person who has applied for a permit in terms of subsection (1) may not work a working equine pending the outcome of such application, in the absence of a permit.

(8) In respect of any application approved in terms of subsection (6), an authorised official must issue a permit on a prescribed form specifying every condition imposed by the Council.

(9) A permit is not transferable from one owner to another.

Amendment, suspension and cancellation of permits

18. The Council may, after consideration of a report and recommendation of an authorised official or veterinary surgeon, by written notice to the holder of a permit contemplated in section 17 –

- (a) amend, suspend or cancel that permit if it is satisfied that failure to do so would result in –
 - (i) the creation or continuation of a nuisance in a public place; or
 - (ii) a continued contravention of any provision of section 19;
- (b) with immediate effect amend, suspend or cancel that permit if such official is of the view that it is urgently necessary to do so to eliminate or reduce a significant risk to the public posed by a nuisance in a public place.

Control of working equines

19. No person putting to work a working equine shall -

- (a) permit the working equine to be in any public place whilst being incapable of pulling an animal drawn vehicle;

- (b) permit the working equine to constitute a hazard to traffic using any public street;
- (c) permit the working equine to constitute or to his or her knowledge be likely to constitute a source of danger or injury to any person using a public street;
- (d) permit the working equine to be in any public street or public place except when under his or her control;
- (e) work any working equine which does not have on its person the name, telephone number and address of its owner.

Seizure, impounding and destruction of working equines

20. (1) An authorised official may seize and impound at a place appointed by the Council any working equine which -

- (a) may be destroyed on the advice of a veterinary surgeon or in terms of the provisions of any law;
- (b) in his or her opinion is incapable to continue to pull an animal drawn vehicle;
- (c) in his or her opinion constitutes a hazard to traffic using any public street;
- (d) is at large and apparently without an owner; or
- (e) is found in any public place where such a working equine is, in the opinion of the authorised official, not under proper control.

(2) The Council shall keep a record of all working equines seized and impounded in terms of this By-law indicating the species, marks and distinguishing peculiarities (if any) of such working equines, as well as the last date for their release or otherwise, and such records shall be open for inspection by the public at the Council Offices during office hours.

(3) A working equine impounded in terms of subsection (1) shall be released to the owner or person keeping such working equine upon payment of the fee as fixed by the Council.

(4) A working equine impounded in terms of subsection (1) may be sold or re-homed after it has been detained for not less than ten days unless it has been claimed and released in terms of subsection (3).

(5) If an authorised official is of the opinion that a working equine is a working equine contemplated by the provisions of section 19, he or she may –

(iii) cause a notice to be served on the owner of such working equine requiring such owner to take such steps as will effectively abate such nuisance and to establish to the satisfaction of the authorised official that such working equine will be kept under proper control;

(iv) impound the working equine and deal with it in terms of this section, provided that working equine shall not be released to its owner unless such owner, within the period of ten days contemplated by section 20(4), provides the authorised official with satisfactory proof that such working equine, if released to him or her, will not cause any further nuisance and will be kept under control.

(6) The proceeds of any sale shall be used to defray all costs connected with such sale and the impounding of such working equine.

(9) Neither the Council nor the authorised official nor any employee of the Council shall be liable for or in respect of any injury suffered or disease contracted by or damage caused to any working equine as result of or during its seizure, impounding, detention, sale or destruction in terms of this By-law.

The rescue of impounded working equines prohibited

21. No person shall, by threats of violence or otherwise, rescue or attempt to rescue from the person or persons in charge thereof any working equine being lawfully brought to the pound, or shall rescue or attempt to rescue any working equine after such working equine has been lawfully impounded by an authorised official.

CHAPTER FIVE

ANIMALS AND POULTRY

22. In order to promote public health no person shall keep or permit to be kept on any premises or property any animal or poultry without the permission of the Council.

Permits

23. (1) For the purpose of promoting public health and restricting public nuisances, the Council may from time to time determine the number, kinds and sex of animals or poultry that may be kept per unit area and the areas within which such animals or poultry shall be prohibited.

(2) The Council may from time to time, determine the kinds of animals and poultry for which a permit is required and the relevant application fee and annual fee for such permit. Applications for such permits must be made on the prescribed form made available by the Council for such purposes.

(3) Permits issued in terms hereof are not transferable and shall only be valid for the specific property in respect of which the application was made.

24. (1) The Council may require an application in terms of section 23(1) to be accompanied by a detailed site plan indicating all existing or proposed structures and fences on the property for which a permit is required.

(2) The Council may require detailed plans and specifications of structures wherein it is proposed to keep animals and poultry, in order to evaluate whether or not to grant a permit applied for in terms of section 23 (2).

(3) Notwithstanding anything to the contrary contained in this by-law, the Council may refuse to approve an application or grant approval subject to specific conditions if, in its opinion, the property owing to its location, siting or geographical features or size, is unsuitable for the keeping of animals or poultry.

(4) No structure that accommodates animals shall be sited:

- (a) within fifteen metres of any boundary of the erf which abuts another residential erf;
- (b) within six metres of any boundary of the erf which abuts any road or public open space; and
- (c) within four and a half metres from any dwelling, servants quarters, inhabited outbuilding and shop or building where food is processed.

(5) Where a structure in which animals will be kept forms part of an outbuilding used for human habitation, such structure must be sited at least four and a half metres from such habitable room and must not be under the same roof space as the habitable room.

(6) No structure in which poultry is kept shall be sited:

- (a) within one and a half metres from any boundary of a residential erf; and
- (b) within one and a half metres from any dwelling, servants quarters, inhabited outbuilding and shop or building where food is processed, sold or stored.

(7) All structures in which animals or poultry are kept shall be suitably screened from any street to the satisfaction of the Council.

(8) No structure in which poultry is kept shall have a height in excess of three and a half metres.

(9) Notwithstanding the aforementioned provisions, the Council may, after considering conditions particular to the property and on condition that no objection is received from adjoining and affected neighbours, waive any or all of the requirements of this chapter and impose other conditions if appropriate.

Storage of feed and manure, disposal of carcasses

25. (1) All manure resulting from the keeping of animals and poultry shall, pending removal from the premises, be stored under shelter in sealed fly-proof containers and disposed of on a regular basis so as to prevent any nuisance from being created, provided that such disposal may not include composting on the premises.

(2) All feed shall be stored in a rodent proof place, container or storeroom for the keeping of animals and poultry.

(3) The premises for the keeping of animals and poultry shall be kept in such condition as not to attract or provide harbourage for rodents.

(4) Carcasses are to be disposed of at the owner's expense and in a manner approved by the Council.

26. The Council may from time to time determine that a fly and rodent proof manure store and feedstore of adequate size and constructed of permanent material, is required on premises where animals are kept.

Kennels and Catteries

27. No person shall keep a kennel or cattery unless the following requirements are complied with:

- (1) Dogs and cats are kept in separate enclosures:

- (i) constructed of durable materials and with adequate access for cleaning, disinfecting and devermination purposes.
 - (ii) with a floor constructed of concrete or other durable and impervious material brought to a smooth finish and graded to a channel one hundred millimetres wide, extending over the full width of the floor and situated within the enclosure, which channel shall drain into a gully connected to the Council sewer system by means of a pipe of approved material with a minimum diameter of one hundred millimetres or to another approved disposal system.
 - (iii) With a kerb one hundred and fifty millimetres high along the entire length of the channel referred to in subparagraph (ii), to prevent stormwater from such area from entering the channel.
- (2) Every enclosure referred to in section 27(1) shall contain a roofed shelter for the accommodation of dogs and cats of which:
- (i) every wall shall be constructed of brick, stone, concrete or other durable material and shall have a smooth internal surface without cracks or open joints; and
 - (ii) the floor shall be of concrete or other impervious and durable material brought to a smooth finish without cracks or open joints and the surface between the floor and the walls of a permanent structure shall be coved.
- (3) In the case of dogs, a dog kennel of moulded fibre cement or other similar material which is movable and placed on a base constructed of concrete or other durable material with an easily cleaned finish, without cracks or open joints, may be provided instead of a shelter contemplated in section 27(2) and if the base of such kennel is not rendered waterproof, a raised sleeping board which will enable the dog to keep dry shall be provided in every such kennel.
- (4) A concrete apron at least one metre wide shall be provided at the entrance of the enclosure over its full width, the apron to be graded to allow for the drainage of water away from the enclosure.
- (5) A supply of potable water, adequate for drinking and cleaning purposes, shall be provided in or adjacent to every enclosure.
- (6) Separate isolation facilities for sick dogs and cats shall be provided to the satisfaction of the Council.
- (7) If cages are provided for the keeping of cats, such cages shall be of durable, impervious material and constructed so as to be easily cleaned.

Structures to be in proper state of repair and no alterations

28. (1) All structures shall at all times be kept in a proper state of repair by the owner or occupier of the premises.

(2) No person shall alter or use a structure for the keeping of animals or poultry for purposes other than those specified in the permit.

Notices, amendment and cancellation of permits

29. (1) If, in the opinion of the Council, any animals kept on any property in terms of which a permit has been issued by the Council under this By-Law cause a health nuisance, danger to health or endanger the safety of the public or where more animals are kept than authorised in the permit issued, the Council may serve written notice on the holder of the permit, or in his absence the person in charge, to remove or cause to be removed such nuisance or danger or excess number of animals within a specified period.

(2) The holder of a permit or the person in charge, on receiving a notice in terms of section 29 (1), shall comply with the requirements as specified by the Council in such notice, failing which the Council may, at its discretion-

(a) cancel the permit to keep animals on such property, or

(b) amend the permit.

(3) The holder of a permit shall, when requested by Council to do so, return the permit issued to him for amendment or cancellation, as the case may be.

CHAPTER SIX

MISCELLANEOUS

Offences and penalties

30. (1) Any person who -

(a) contravenes or fails to comply with any provisions of this By-law or with any order or notice lawfully issued thereunder commits an offence; and

(b) continues to commit an offence after notice has been served on him or her to cease committing such offence or after he has been convicted of such offence shall be guilty of a continuing offence.

(2) Any person convicted of an offence under this By-law shall be liable to a fine or imprisonment for a period not exceeding two years.

(3) In the case of a continuing offence an additional fine or imprisonment for a period not exceeding ten days for each day on which such offence continued may be imposed or both a fine and imprisonment.

(4) Any court convicting any person of keeping any animal which is not kept under control in accordance with the provisions of this By-law may, in addition to the penalty referred to in subsection (2), order the destruction of the animal concerned, and thereupon an authorised official may destroy such animal.

Application to the State and Council

31. These By-laws bind the State and the Council.

Repeal

32. The following By-laws are hereby repealed:

- (a) Kuilsriver Municipality By-law relating to the keeping of dogs as published in Provincial Notice No. 1027 of 1977;
- (b) Milnerton Municipality By-law relating to the control of dogs as published in Provincial Notice No. 481 of 1987;
- (c) Brackenfell Municipality By-law relating to the keeping of dogs as published in Provincial Notice No. 190 of 1979 and Amendment of By-law relating to the keeping of dogs as published in Provincial Notice No. 510 of 1990;
- (d) Kraaifontein Municipality By-law for the Control of dogs as published in Provincial Notice No. 669 of 1979 and Amendment to the By-law for the control of dogs as published in Provincial Notice No. 526 of 1982;
- (e) Divisional Council of Stellenbosch By-law relating to the keeping of dogs as published in Provincial Notice No. 692 of 1979;

- (f) Fish Hoek Municipality dog control by-law as published in Provincial Notice No. 675 of 1979;
- (g) Simonstown Municipality Regulations relating to the keeping of dogs as published in Provincial Notice No. 549 of 1963;
- (h) City of Tygerberg By-law relating to the control of dogs as published in Provincial Notice No. 567 of 2000;
- (i) Cape Town Municipality By-law for the control of dogs as published in Provincial Notice No. 658 of 1981;
- (j) Cape Divisional Council By-law relating to the control of dogs as published in Provincial Notice No. 781 of 1985;
- (k) Part 2 of the Environmental Health By-law of the City of Cape Town as published in the Provincial Gazette Extraordinary dated 30 June 2003.

Short title

- 33.** This By-law is called the City of Cape Town Animal By-Law, 2008.

**POUNDS ORDINANCE
NO. 18 OF 1938**

[PROMULGATED ON THE 25 NOVEMBER, 1938 –
Afrikaans text signed.]

as amended by

Pounds (Amendment) Ordinance, No. 30 of 1940

Pounds (Amendment) Ordinance, No. 14 of 1941

Pounds (Amendment) Ordinance, No. 8 of 1950

Decimal Coinage Ordinance, No. 18 of 1960

Pounds (Amendment) Ordinance, No. 23 of 1962

Pounds (Amendment) Ordinance, No. 21 of 1970

Pounds (Amendment) Ordinance, No. 7 of 1971

GENERAL NOTE

In terms of Proclamation No. 115 of 17 June, 1994, the administration of Ordinance No. 18 of 1938 has been assigned to this Province.

ORDINANCE

Ordinance to consolidate and amend the laws relating to pounds and trespasses

ARRANGEMENT OF SECTIONS

1. Laws repealed
2. Interpretation of terms
- 3 to 5 inclusive
6. Poundmaster to receive animals tendered as having trespassed
7. Receipt for impounded animals
8. Number of enclosures to be kept
9. Poundmasters answerable to owner for injury by neglect
10. Penalty for using impounded animal
11. Record to be kept of death of or injury to any animal impounded
12. Powers of poundmaster to destroy animals which are dangerous or suffering from contagious disease
13. Animals trespassing on poundmaster's own property
14. Poundmasters to give notice to owner of impounded animals
15. Copy of Ordinance to be kept at every pound, and tariff to be posted up
16. Pound book to be kept
17. Inspection of and extracts from pound book
18. Copy of entries in pound book to be sent to the local authority after every pound sale
19. Penalties for certain offences by poundmasters
20. Offences and penalties for false entries, etc., by poundmaster
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23. Pound to which animals are to be sent
24. Destruction of pigs, poultry, pigeons and dogs
25. Tender by owner before animals are impounded
26. Penalty for selling animal found trespassing
27. Use, detention and ill-treatment of trespassing animals forbidden
- 28.
29. Compensation payable to person delivering animals to be impounded
30. Trespass upon gardens, vineyards, etc
31. Trespass upon uncultivated ground
32. Penalty for repetition of trespass
33. Liability of poundmasters on releasing animals without payment of damages due
34. Assessment of damages when proprietor considers tariff inadequate
35. Award to be in writing
36. Award to be handed to complainant and copy sent to poundmaster
37. Trespass money due for scabby sheep or goats
38. If one sheep or goat trespassing is infected whole flock deemed infected
39. Assessment of damages for trespass of infected sheep or goats
40. Owner of sheep or goats alleged to be infected with scab may demand decision of Government veterinary officer or stock inspector
41. Trespass of stallion, bull, sheep ram or goat ram, when found amongst mares, cows, etc
42. Trespass by stallions, bulls, etc., under ordinary circumstances
43. Assessment of damages under section 41
44. No bulls over one year to be released from pounds in cattle improvement areas
45. Stallions to be castrated before release or sale
46. Castration and fee therefor
47. Period of elapse prior to castration of stallion
48. Conditions under which impounded stallion may be released without castration
49. Who may impound for trespass on roads, streets, public outspans and vacant Crown land
- 49bis.
50. Pound to which such animals sent
51. Trespass upon dam or tank, the property of Government
52. Penalty for repeated trespass upon dam or tank
53. Poundmaster's fees
54. Fees for herding or grazing
55. Fees for keeping and feeding animals separately
56. To whom fees to go
57. Fees for attending pound sales
58. Fees for animals not branded
59. Alteration of tariff by local authority
60. Effect of alteration
61. Publication of altered tariff
62. Local authority to furnish poundmasters with copy of tariff as altered
63. Advertisement to be forwarded to local authority before sale of animals
64. Publication of advertisement

65. Copy to be posted at or near pound and sent to other poundmasters in division
66. Time and place of sales
67. Who to be auctioneer
68. Animal to be impounded at least two weeks before sale
69. Animals to be sold singly, except sheep and goats
70. Sales shall be for cash and how proceeds to be dealt with
71. Illegal impounding and penalties therefor
- 71bis. Penalty for rescue of animals
72. When property trespassed on is in different area from that of the proper pound and the rates of the two areas differ
- 72bis. Recovery of loss by local authority in respect of animals impounded from area of another local authority
73. Molestation of animals on owner's property
74. Reservation of action for trespass
75. Recovery of penalties
76. General penalty
77. Costs of prosecution or defence
78. Imprisonment on non-payment of fine
79. Judicial officer may impound and remove animals alleged to have been stolen
80. Donkey stallion may be specially marked and registered. Donkey stallion not specially marked may be destroyed if found trespassing
81. Impounding of donkeys
82. Sections 80 and 81 inapplicable to certain divisions
- 82bis. Application of Ordinance
83. Short title
- Schedule A Laws repealed
- Schedule B Rate of compensation
- Schedule C Trespass on cultivated land
- Schedule D Trespass on uncultivated land
- Schedule E Pound fees
- Schedule F Sustenance fees
- Schedule G Fees for animals to be separately herded

BE IT ORDAINED by the Provincial Council of the Province of the Cape of Good Hope, as follows:—

PRELIMINARY

1. Laws repealed.—The laws specified in Schedule A to the extent set forth in the third column are hereby repealed.

2. Interpretation of terms.—For the purposes of this Ordinance, unless the context otherwise indicates, the following terms mean respectively:—

"cattle": bulls, cows, oxen, heifers, steers and calves.

"horses": horses, mares, geldings, colts, fillies, donkeys and mules.

"sheep": rams, ewes, wethers, lambs.

"goats": rams, ewes, wethers, kids.

"ostriches": domesticated male and female ostriches and ostrich chicks.

"animals": horses, cattle, sheep, goats, ostriches and pigs.

"stallion": male horse, donkey or mule not castrated or partially castrated.

"flock": any number of sheep or goats more than one, which are in one lot, or in the charge of one person.

"proprietor": any owner, lessee, or occupier of land.

"occupier": any person in actual occupation, or entitled as owner to occupy any land.

"owner": in relation to any animal includes the agent of, or caretaker for the owner.

"sufficient fence": when applied to a wire fence a fence of so many wires and of such construction as the local authority in whose area the fence is situated shall from time to time decide; in other cases a wall, fence or barrier at least 1400 mm high and through which no animal could pass without breaking it.

[Definition of "sufficient fence" amended by s. 1 of Ord. 21 of 1970.]

"local authority": a Divisional Council, a Municipal Council, Village Management Board or Local Board.

"Justice of the Peace": one who is such under the provisions of the Justice of the Peace and Oaths Act, 1914 (Act No. 16 of 1914), or any other law, but does not include a special justice of the peace in terms of the Special Justice of the Peace Act, 1918 (Act No. 2 of 1918).

"division": the area under the jurisdiction of a Divisional Council, but does not include the area under the jurisdiction of an urban local authority.

"uncultivated lands"

[Definition of "uncultivated lands" deleted by s. 2 of Ord. 14 of 1941.]

"urban local authority" means a Municipal Council, Village Management Board or Local Board.

"Government veterinary officer": a veterinary officer as defined in section *two* of the Diseases of Stock Act, 1911 (Act No. 14 of 1911).

[Definition of "Government veterinary officer" inserted by s. 2 of Ord. 30 of 1940.]

"veterinarian": a person who is qualified as such in accordance with the provisions of the Veterinary Act, 1933 (Act No. 16 of 1933).

[Definition of "veterinarian" inserted by s. 2 of Ord. 30 of 1940.]

"stock inspector": a person competent and qualified to inspect stock, and appointed for such purposes by the Department of Agriculture and Forestry.

[Definition of "stock inspector" inserted by s. 2 of Ord. 30 of 1940.]

ESTABLISHMENT OF POUNDS AND APPOINTMENT OF POUNDMASTERS

3 to 5 inclusive.

[Ss. 3 to 5 inclusive repealed by s. 9 of Ord. 23 of 1962.]

DUTIES OF POUNDMASTER

6. Poundmaster to receive animals tendered as having trespassed.—(1) It shall be the duty of every poundmaster to receive into his charge all animals tendered at his pound between sunrise and sunset, and during such other hours as the local authority may determine, by any proprietor, or by the

caretaker for any proprietor or by any person authorised in writing thereto by such proprietor or caretaker, in order to be impounded as having been found trespassing upon the land of such proprietor.

(2) Whenever any local authority has under this section determined hours during which animals may be impounded outside of the period between sunrise and sunset, it shall give notice of such hours by means of an advertisement once in the *Provincial Gazette* and once a week for two successive weeks in a newspaper or newspapers circulating in the division. A local authority may in like manner amend or rescind such notice.

(3) Any poundmaster who refuses or neglects to receive animals tendered as aforesaid shall be liable on each occasion to a fine not exceeding five pounds: and he shall, in addition, be liable for any damage caused to the owner of the said animals, or to any other person, by reason of such refusal or neglect; provided that in case any horse or cattle suffering from any contagious disease is sent to the pound, such horse or cattle shall be kept separate from all other impounded stock, and the poundmaster may cause the same to be destroyed under the provisions of section 12.

7. Receipt for impounded animals.—Every poundmaster shall give to the person delivering animals into his charge a written receipt, setting forth the number and description of the animals so delivered, and specifying the trespass for which the said animals are reported to be impounded.

8. Number of enclosures to be kept.—Every poundmaster shall maintain in good repair, and as far as possible free from all infection, not less than three separate enclosures, viz. enclosures (a) for ostriches and horses; (b) for cattle and (c) for sheep, goats and pigs: provided that a local authority may in regard to any pound in its area, give permission to the poundmaster to maintain in manner aforesaid a smaller number of such enclosures.

9. Poundmasters answerable to owner for injury by neglect.—Every poundmaster shall take proper care of any animal impounded, and shall be responsible to the owner of any such animal for any damage or injury sustained by reason of any neglect or default on the part of himself or any person authorised by him to act on his behalf.

10. Penalty for using impounded animal.—Any poundmaster who shall ride, or use any impounded animal for any other purpose shall be guilty of an offence and liable for every such offence to a penalty not exceeding five pounds.

11. Record to be kept of death of or injury to any animal impounded.—In case of the death or injury of any impounded animal the poundmaster shall enter in his pound book a description of such animal and the cause of its death or injury; and the absence of any such entry, or its falsity in any material respect, shall be held to be *prima facie* proof of the fact that such death or injury was due to the default of the poundmaster.

12. Powers of poundmaster to destroy animals which are dangerous or suffering from contagious disease.—(1) Subject to sub-section (2) any poundmaster may destroy any impounded animal suffering from a contagious disease, or likely to prove dangerous to human life, or destructive to other animals impounded; provided that—

- (a) no such animal shall be destroyed before a justice of the peace or two disinterested landowners, or the medical officer of health or veterinary surgeon employed by the local authority or a Government veterinary officer or a veterinarian have examined it, and have agreed with the poundmaster as to the necessity for its destruction;

[Para. (a) amended by s. 4 (i) of Ord. 30 of 1940.]

- (b) the poundmaster shall summon the owner of such animal, if known, to attend the examination aforesaid. Such summons shall be delivered personally or by registered letter duly sent through the post;

- (c) if the owner of the animal objects to its destruction he may release it, if he does so forthwith, and at the same time releases all other animals belonging to him and impounded on the same occasion as the animal proposed to be destroyed and if the poundmaster is authorised to release it by a Government veterinary officer or a stock inspector;

[Para. (c) amended by s. 4 (ii) of Ord. 30 of 1940.]

(d) every Justice of the Peace, landowner, medical officer of health or veterinary surgeon attending for the purpose of the inspection aforesaid, shall be paid by the poundmaster the sum of ten shillings and sixpence. The amount so paid may be recovered by the poundmaster from the owner of the animal if it be destroyed; if the animal be not destroyed, or the owner is unknown, or if it is impossible to recover from the owner the whole or any part of such amount, then the said amount, or the portion of it unrecovered as the case may be, shall be paid to the poundmaster by the local authority concerned.

(2) The provisions of sub-section (1) shall not apply to sheep or goats suffering merely from scab.

(3) If any poundmaster knows or has reasonable grounds for believing that any animal in his pound is suffering from a disease as defined in section two of the Diseases of Stock Act, 1911 (Act No. 14 of 1911), he shall report that fact in writing to the Government veterinary officer of the district.

[Sub-s. (3) inserted by s. 4 (iii) of Ord. 30 of 1940.]

13. Animals trespassing on poundmaster's own property.—No poundmaster who is in charge of a pound situated within a distance of 14,5 kilometres from any other pound in the same local authority area, shall confine in his own pound any animals found trespassing upon property belonging to himself; and if it is necessary to impound such animals they shall be sent to such other pound in the same local authority area as may be nearest to his own pound by a practicable road or thoroughfare.

Any poundmaster sending such animals to such other pound shall enter in his pound book the number and description of the animals sent.

A poundmaster who contravenes any provision of this section shall be guilty of an offence and be liable to a penalty not exceeding ten pounds.

[S. 13 amended by s. 2 of Ord. 21 of 1970.]

14. Poundmasters to give notice to owner of impounded animals.—Every poundmaster who knows the name of the owner of any animal impounded in his pound shall forthwith send through the post or otherwise a written notice addressed to such owner at his place of residence, informing him of the fact that the said animal has been impounded.

15. Copy of Ordinance to be kept at every pound, and tariff to be posted up.—(1) Every poundmaster shall have and preserve at or near his pound, a copy of this Ordinance, in both official languages, and such copy shall at all reasonable times be open to the public for reference.

(2) Every poundmaster shall erect and maintain at or near the pound, a board upon which shall be printed, painted or written in legible characters, in both official languages, the tariff of charges or fees and the scales of damages fixed in terms of Schedules B, C, D, E, F and G to this Ordinance, or such other tariff and scales as the local authority has duly authorised in their place.

16. Pound book to be kept.—(1) Every poundmaster shall keep a pound book the entries in which shall be made in either of the official languages or in both, according as the local authority may direct. The following particulars shall be legibly entered by every poundmaster in his pound book:—

- (a) the date when, and the cause for which, all animals received by him are impounded;
- (b) the number and description of such animals;
- (c) the name and residence of the person impounding such animals, and the name and residence of the owner or supposed owner;
- (d) the date and particulars of the release or sale of the animals, as the case may be;
- (e) any other matters which he may be directed by the local authority to ascertain and record; and the particulars of any notice sent to him in terms of section 27.

The entries under paragraphs (a), (b) and (c) shall be made at the time the animals are impounded and the entries under paragraphs (d) and (e) shall be made as soon as the poundmaster becomes possessed of the necessary information; provided that no entry shall be made after a dispute has arisen.

(2) Generally, in regard to the form in which entries in the pound book are to be made, the poundmaster shall follow such directions as he may receive from the local authority.

17. Inspection of and extracts from pound book.—(1) Every pound book shall be kept at the pound or residence of the poundmaster, and shall at all reasonable times be open for the inspection of any authorised officer of the local authority, Government veterinary officer, stock inspector and of any member of the police force, free of charge; and shall be similarly open to every other person upon payment of a fee of sixpence for each inspection.

[Sub-s. (1) amended by s. 5 of Ord. 30 of 1940.]

(2) Every poundmaster shall grant extracts, signed by himself, from his pound book to any person demanding the same, upon payment of one shilling for every such extract not exceeding one hundred words, and sixpence for every subsequent hundred or part of one hundred words: and any such extract shall without further proof be admissible as competent evidence in any court of law.

18. Copy of entries in pound book to be sent to the local authority after every pound sale.—Every poundmaster shall within a fortnight after the date of each pound sale forward to the local authority a copy of all entries in his pound book made since the date of the preceding transmission, provided that the first copy so forwarded after the commencement of this Ordinance shall be a copy of all entries made after a date to be fixed by the local authority. The local authority shall preserve all such copies for the inspection of any person desirous of seeing them.

19. Penalties for certain offences by poundmasters.—Every poundmaster and in the case of section 67, every person who conducts a pound sale who—

- (a) refuses to allow his pound book or a copy of this Ordinance to be inspected by any person having a lawful right to inspect it; or
- (b) neglects in any respect to comply with the provisions of sections 63 and 65 to 68 inclusive; or
- (c) neglects or refuses to forward to the local authority the copies of entries referred to in section 18;

shall be guilty of an offence and be liable for each offence to a penalty not exceeding five pounds.

20. Offences and penalties for false entries, etc., by poundmaster.—Every poundmaster who himself—

- (a) knowingly makes a false entry in his pound book;
- (b) fraudulently destroys or erases any entry already made;
- (c) wilfully delivers to the local authority concerned a false copy or extract from his pound book; or
- (d) through some other person causes or permits anything mentioned in paragraph (a), (b) or (c) to be made or done shall be guilty of an offence and be liable for each offence to a penalty not exceeding twenty-five pounds.

21. Inspection of pound book at place of sale.—Whenever a sale of animals impounded is to take place the poundmaster, or person authorised to conduct the sale, shall take the pound book with him to the place of sale, and such book shall be open at the place of sale, free of charge, to all persons desirous of inspecting it.

22. Savings in regard to other laws.—(1) The provisions of this Ordinance shall be subject to the Diseases of Stock Act, 1911 (Act No. 14 of 1911), and regulations made thereunder.

(2) Nothing in this Ordinance contained shall be deemed to alter in any way the powers, functions and duties conferred upon poundmasters by any of the following laws, as amended from time to time:—

The Cattle Removal Act, 1870 (Act No. 14 of 1870).

The Brands Registration Act, 1890 (Act No. 12 of 1890).

The Private Locations Act, 1909 (Act No. 32 of 1909): in any area in which this Act may still be operative.

(3) Nothing contained in this Ordinance shall be construed as altering in any way the provisions of sections 209, 244, 245, 258, and 259 of the Divisional Councils and Roads Ordinance, 1917 (Ordinance No. 13 of 1917).

TRESPASS ON PRIVATE PROPERTY

23. Pound to which animals are to be sent.—Any proprietor upon whose land any animals are found trespassing may send such animals to that pound which is the nearest by a practicable road or thoroughfare to the land trespassed upon, and to no other pound.

24. Destruction of pigs, poultry, pigeons and dogs.—(1) All pigs, poultry or pigeons found trespassing in or upon—

- (a) any garden, vineyard or orchard;
- (b) any place upon which any species of cultivated crop is growing, or upon which such crop having been gathered is still lying;
- (c) any place containing grain;

may be destroyed by the proprietor or any person acting on his authority.

(2) Any dog found trespassing between the first day of December and the first day of May of the following year in any vineyard or raisin floor, and doing damage therein, may be similarly destroyed; provided that any dog found trespassing at any time in a fenced camp or enclosed place in which there are game or other animals may be destroyed; and provided further that the owner of any dog, or any person having a dog in his possession or in his charge, shall be liable to make good any damage done by such dog to any game or other animals in any fenced camp or enclosed place.

25. Tender by owner before animals are impounded.—The owner of any animals liable to impoundment for trespass may, before the animals have been removed from the property trespassed upon, tender to the person complaining of the trespass a sum of money to cover the damage suffered by him, or the trespass money lawfully claimable under any provision of this Ordinance in connection with such trespass. Such tender shall be made to the complainant himself or his caretaker. If such animals are in course of being conveyed to the pound, then their owner may tender a sum of money to cover the damage or trespass money aforesaid, and also the compensation to which the complainant would be entitled under this Ordinance if the animals had actually been impounded. Such tender may be made either to the complainant himself or to his servant or agent charged with the duty of conveying the animals to the pound; and in either event if the said tender be refused, the complainant shall pay the cost of all legal proceedings which he may thereafter institute, and shall be liable for all damage sustained by the owner of the animals by reason of their detention after the date of tender, unless the tender is found to be insufficient by a competent court: or unless in the opinion of such court, the tender was refused by the complainant or person in control of the animals in the *bona fide* belief that the person making the tender was not the owner or the duly authorised agent of the owner.

[S. 25 amended by s. 1 of Ord. 7 of 1971.]

26. Penalty for selling animal found trespassing.—No proprietor shall sell or dispose of any animal found trespassing upon his property. Any proprietor who contravenes this provision shall be guilty of an offence, and be liable to a fine not exceeding ten pounds.

A conviction under this section shall not affect any right the owner of an animal may have to recover from such proprietor the value of such animal and any damage sustained by reason of its detention or sale.

27. Use, detention and ill-treatment of trespassing animals forbidden.—(1) No proprietor shall ride upon, or use for any purpose any animal found trespassing upon his land, or detain such animal

for any space of time longer than twenty-four hours.

(2) No proprietor shall knowingly allow any stray animal to remain upon his property for a period longer than two weeks unless he has forwarded to the owner of the animal, if known to him, or to the nearest poundmaster, a notice of the presence of such animal upon his property. Such notice shall be sent by letter personally delivered or duly posted, and shall set forth as nearly as possible the species, marks, and distinguishing peculiarities of the animal in question and, in regard to horses and cattle, their colour also.

(3) No person shall furiously drive, worry or wantonly ill-treat any animal found trespassing, or conduct the same to the pound by any except the shortest available road or thoroughfare, unless some other shall be more desirable for the animal itself, or send any number of animals found trespassing at the same time and place in separate lots to the pound with the object of obtaining additional compensation.

[Sub-s. (3) amended by s. 2 of Ord. 7 of 1971.]

(4) Any person contravening any provision of this section shall be guilty of an offence, and be liable to a penalty not exceeding five pounds, and shall make good to the owner of such animal or animals any damage sustained by reason of such infringement.

28.

[S. 28 repealed by s. 2 of Ord. 8 of 1950.]

29. Compensation payable to person delivering animals to be impounded.—Every person who delivers any animal to a poundmaster to be impounded shall be entitled to receive from such poundmaster compensation at the rate set forth in Schedule B; provided that—

- (a) when the person so delivering an animal is not himself the proprietor of the land trespassed upon, or the caretaker for the proprietor, then he shall produce a written memorandum signed by such proprietor or caretaker giving a description of the animal and authorising the bearer to convey or conduct it to the pound, and every such memorandum shall be preserved by the poundmaster as a voucher;
- (b) when more persons than one have been necessarily employed in conveying or conducting an animal other than an ostrich to the pound, compensation shall be paid by the poundmaster to only one of such persons; but the person impounding the animal may recover from the owner, in any competent Court, similar compensation in respect of every other such person so employed; and
- (c) when an ostrich is impounded the poundmaster shall pay compensation to as many drivers as are necessarily employed.

[S. 29 substituted by s. 3 of Ord. 7 of 1971.]

30. Trespass upon gardens, vineyards, etc.—The owner of any animal lawfully impounded for trespass upon—

- (a) any garden, vineyard or orchard;
- (b) any place upon which a cultivated crop is growing, or upon which such a crop, having been gathered, is still lying;
- (c) any yard, floor or place containing grain or dried fruit;

shall, subject to the provisions hereinafter contained, be liable to pay trespass money to the proprietor of the property trespassed upon, calculated according to the rates set forth in Schedule C: provided that—

- (i) any proprietor, or the caretaker for any proprietor, sending animals to the pound for a trespass under this section shall at the same time send a memorandum signed by him to the poundmaster, setting forth the number and description of the animals and the species of place or property upon which they have trespassed;
- (ii) when the person impounding elects to claim damages calculated according to Schedule C, the memorandum shall state the amount so claimed: but if he elects to have the amount of

damage assessed in accordance with the provisions of section 34, or if he elects to proceed for damages by action, the memorandum shall state such election on the part of the person signing it;

- (iii) if the memorandum delivered with the animals does not state the species of place or property upon which they have trespassed, then trespass money shall be payable to the proprietor of the property trespassed upon at the rate set forth in Schedule D; and
- (iv) when such animals are taken to the pound in person by the proprietor or caretaker aforesaid, then such proprietor or caretaker may make a verbal statement upon the matters referred to in the preceding paragraphs, which shall be taken down and recorded by the poundmaster.

31. Trespass upon uncultivated ground.—The owner of any animals lawfully impounded for trespass upon any uncultivated ground or any place not of the description given in section 30, shall be liable to pay trespass money to the proprietor of the property trespassed upon at the rate set forth in Schedule D.

32. Penalty for repetition of trespass.—In case any property shall be trespassed upon twice within the space of one fortnight by the same animals belonging to the same owner, then the said owner shall be liable in respect of the second trespass to pay twice the amount of trespass money which would have been payable under this Ordinance had such second trespass not been a repeated trespass.

33. Liability of poundmasters on releasing animals without payment of damages due.—No poundmaster shall release any impounded animal until there has been paid to him, over and above all other fees and charges the amount of all damages or trespass money due and payable under either section 30, 31 or 32 or under sections 36, 37, 39, 43, 50 and 51 in respect of such animal.

A poundmaster who releases or permits to be released any such animal, without payment of the damages or trespass money aforesaid, or both damages and trespass money, if payable, shall be liable for such damages or trespass money, or both such damages and trespass money.

34. Assessment of damages when proprietor considers tariff inadequate.—(1) If any proprietor considers the amount of trespass money claimable under the Schedules to this Ordinance inadequate for the damage done to his property by animals which have trespassed thereon, he may demand that such damage shall be assessed by the nearest justice of the peace as umpire, and two landowners as arbitrators.

(2) In every such case the following provisions shall apply:—

- (a) the proprietor shall give notice to the owner of the animals (if he is known) and the nearest justice of the peace within twenty-four hours after the trespass has been committed;
- (b) the proprietor shall appoint one arbitrator and the owner of the animals (if he is known) the other. If the owner refuses to appoint an arbitrator then the arbitrator nominated by the proprietor shall proceed to assess the damage;
- (c) if the nearest justice of the peace is absent from home or is unable or unwilling or fails to act, then the two arbitrators appointed shall select some other impartial landowner to act as umpire in place of the justice of the peace;
- (d) if the owner is unknown then the assessment shall not take place except in the presence of a justice of the peace, and the proprietor shall then obtain the services of the nearest available justice of the peace, who shall appoint two landowners as arbitrators and shall himself act as umpire;
- (e) the justice of the peace, or referee shall appoint a convenient time for the inspection of the property trespassed upon;
- (f) the referee and arbitrators shall be entitled to receive from the complainant for their services the sum of ten shillings and sixpence each, which charge as well as the damages assessed, shall be paid to the complainant by the owner, in case the damages assessed shall exceed the amount which would under any of the said Schedules have been

claimable;

- (g) if any proprietor who demands arbitration under this section shall agree with the person from whom he claims damages to submit the matter to any single referee or to any arbitrators whom the parties may select, then such referee or arbitrators shall, unless the written agreement for arbitration shall otherwise provide, be bound to act in accordance with the provisions of this section; and their award shall be considered to be of the same effect as if it had been given by the justice of the peace and landowners herein mentioned.

35. Award to be in writing.—Every award made under section 34 shall be in writing, and shall be signed by the arbitrators and by the justice of the peace, or umpire, or in the case of a single landowner being lawfully entitled to make it, as hereinbefore provided, by such landowner; and it shall state the amount at which the damage has been assessed, and also whether the complainant or the owner of the animals is liable to pay the charges for the award; provided that if the justice of the peace, or umpire, and landowners shall not agree in their assessment, then the amount agreed upon by any two of them shall be the amount awarded.

36. Award to be handed to complainant and copy sent to poundmaster.—Every such award shall be handed to the complainant, who shall send a true copy thereof to the poundmaster of the pound to which the animals have been sent, and thereupon the assessed damages and charges, if allowed, shall become a charge upon the animals impounded.

37. Trespass money due for scabby sheep or goats.—(1) The owner of any sheep or goats infected with scab, and found trespassing upon any property shall, if the said sheep or goats are not found mixed with other sheep or goats belonging to the proprietor be liable to pay the proprietor twice the amount of trespass money which would have been payable under the provisions of section *thirty* or *thirty-one* in regard to a similar trespass by sheep or goats not so infected.

If the trespassing sheep or goats are found mixed with other sheep or goats belonging to the proprietor and free from scab, then their owner shall be liable to pay to the proprietor four times the amount of trespass money which would have been payable under the aforesaid sections in regard to a similar trespass by sheep or goats not so infected.

(2) Any person who wilfully drives any sheep or goats, knowing the same to be infected with scab, into or upon the property of another person, upon which property there are at the time any sheep or goats not infected with scab, shall be guilty of an offence and over and above any damage or trespass money payable under either this Ordinance or otherwise, shall be liable to be imprisoned, with or without hard labour, for any period not exceeding six months.

38. If one sheep or goat trespassing is infected whole flock deemed infected.—For the purposes of this Ordinance if any sheep or goat found trespassing is infected with scab, then all sheep or goats in the same flock, and found trespassing at the same time shall be deemed to be similarly infected, and if any sheep or goat in any flock with which any other flock has become mixed is so infected then the entire mixed flock shall be deemed to be similarly infected.

39. Assessment of damages for trespass of infected sheep or goats.—Any proprietor who is entitled to claim damages under this Ordinance for the trespass of any sheep or goats infected with scab upon his property, may require that the amount of damage shall be determined by a justice of the peace, or umpire, and two landowners: provided that—

- (a) the provisions of sections 34, 35 and 36 shall *mutatis mutandis* apply to every such case; and
- (b) the justice of the peace or umpire and the arbitrators shall, before awarding any damages, ascertain whether or not the trespassing sheep or goats were mixed with other sheep or goats not trespassing, and whether or not such other sheep or goats at the time the trespassing sheep or goats became mixed with them were free from such disease.

[Para. (b) amended by s. 6 of Ord. 30 of 1940.]

40. Owner of sheep or goats alleged to be infected with scab may demand decision of Government veterinary officer or stock inspector.—The owner of any sheep or goats alleged to be

infected with scab, and in respect to the trespass of which damages or trespass money are claimed under this Ordinance, may demand that the question whether such sheep or goats are so infected be submitted for decision to a Government veterinary officer or stock inspector, whose decision shall be final.

[S. 40 repealed and substituted by s. 7 of Ord. 30 of 1940.]

41. Trespass of stallion, bull, sheep ram or goat ram, when found amongst mares, cows, etc.—The owner of any stallion, bull, sheep ram or goat ram which is found trespassing upon the property of another person, and found to be in company with any mare, cow, heifer or ewe, respectively, either belonging to the proprietor or which is upon the proprietor's property with his consent, shall be liable to pay to the proprietor, over and above all other pound fees or charges, a penalty calculated upon the following scale:—

- (a) for every stallion so found, a sum not exceeding ten pounds;
- (b) for every bull so found, a sum not exceeding five pounds;
- (c) for every sheep ram or goat ram so found, a sum of not exceeding one pound.

42. Trespass by stallions, bulls, etc., under ordinary circumstances.—The provisions of section 41 shall not apply to any stallion under the age of two years, to any bull under the age of one year, or to any sheep ram, or goat ram under the age of nine months, and the trespass money payable in respect of any stallion, bull, sheep ram or goat ram, found trespassing, but not in the circumstances described in the said section, shall be the same amount as would have been payable in respect of a similar trespass by a gelding, ox or wether, as the case may be.

43. Assessment of damages under section 41.—Any person who is entitled to claim damages under section 41 may require that the amount of damages shall be determined by a justice of the peace, or umpire and two landowners: and in that case the provisions of sections 34,35 and 36 shall apply *mutatis mutandis* to such determination and enquiry.

44. No bulls over one year to be released from pounds in cattle improvement areas.—No bull over the age of one year may be released from any pound within any area declared to be a cattle improvement area under the provisions of section 24 of the Live Stock and Meat Industries Act, 1934 (No. 48 of 1934), unless the provisions of section 29 of the said Act have been complied with.

45. Stallions to be castrated before release or sale.—No stallion above the age of two years or bull above the age of one year which has been lawfully impounded shall be released by the owner thereof, or sold out of the pound, without being previously castrated, unless such stallion or bull is released under the provisions of section 48.

46. Castration and fee therefor.—Every lawfully impounded stallion not released under the provisions of section 48 shall be castrated by the poundmaster, if competent to perform such operation, or by some other competent person employed by him at his own expense, and such poundmaster shall be allowed for the performance of this duty a fee of ten shillings, to be recovered from the owner of such stallion, if known, or deducted from the proceeds of sale should such animal be sold out of the pound; provided that no such fee shall be recoverable from the owner in respect of any animal which has died while in the poundmaster's keeping in consequence of such castration. If the said proceeds be insufficient to pay the said fee, then the balance of the amount of such fee shall be paid to the poundmaster by the local authority concerned.

47. Period of elapse prior to castration of stallion.—No stallion shall (except as hereinafter provided) be castrated under the provisions of this Ordinance until it has remained impounded for at least three weeks; and any stallion not sooner released by or on behalf of the owner thereof, shall be sold at the first pound sale occurring after the expiration of thirty days from the date when such stallion was impounded; provided that if the owner of such stallion has given his consent, or has declined to release it under section 48, such stallion may be castrated forthwith, and shall be castrated without unnecessary delay.

48. Conditions under which impounded stallion may be released without castration.—The owner of any stallion or bull impounded shall be entitled to release such stallion without its being castrated, upon payment of pound fees and other charges, and upon giving security to the satisfaction of

any magistrate or justice of the peace for the payment of the penalty and costs of suit recoverable under section 48: provided always that every such owner shall be entitled to tender to any person claiming any penalty under the section aforesaid, such sum as he shall consider adequate to cover such penalty: and in the event of such tender being refused, the person claiming any such penalty shall be condemned in the costs of such legal proceedings as he may afterwards institute for the recovery thereof, unless the court in which the same is pending shall award a penalty exceeding the amount so tendered.

TRESPASS ON ROADS, STREETS, OUTSPANS AND GOVERNMENT PROPERTY

[Heading amended by s. 8 of Ord. 30 of 1940.]

49. Who may impound for trespass on roads, streets, public outspans and vacant Crown land.—Any person may impound any animal found unattended upon any road, street, thoroughfare or public place, or, whether unattended or not, upon any public outspan or vacant Crown land.

The provisions of this section shall not apply to animals in the possession of travellers who have outspanned for a period not greater than twenty-four hours, or for a period during which they may be detained by stress of weather or other sufficient cause upon a public outspan.

[S. 49 substituted by s. 9 of Ord. 30 of 1940, amended by s. 3 of Ord. 14 of 1941 and amended by s. 3 of Ord 8 of 1950.]

49bis.

[S. 49bis inserted by s. 4 of Ord. 8 of 1950 and repealed by s. 141 of Ord. 19 of 1955.]

50. Pound to which such animals sent.—Any animal impounded under section 49 shall be sent to the same pound as would have been the case had the road, street, thoroughfare, public place, outspan or vacant Crown land been private property, and it had trespassed thereon; and the same compensation and trespass money shall be payable as if the said road, street, thoroughfare, public place, outspan or vacant Crown Land were private property; provided that—

- (a) subject to paragraph (b) the compensation shall be paid to the person taking the animal to the pound, and the trespass money shall be paid to the local authority concerned;
- (b) no compensation shall be payable unless the animal is impounded by or on the written authority of a Justice of the Peace or member or authorised official of a local authority.

[S. 50 amended by s. 4 of Ord. 14 of 1941, by s. 5 of Ord. 8 of 1950 and by s. 4 of Ord. 7 of 1971.]

51. Trespass upon dam or tank, the property of Government.—Any animal, not belonging to or in possession of a traveller, which is found trespassing upon any dam or tank belonging to the Union Government, Provincial Administration or to the local authority and intended for the use only of travellers and their cattle, may be impounded by or on the written authority of a Justice of the Peace, member or authorised official of a local authority, or by any persons duly authorised to take charge of such dam or tank; and the person so impounding shall be entitled to the compensation as in section 50 provided.

[S. 51 amended by s. 6 of Ord. 8 of 1950 and by s. 5 of Ord. 7 of 1971.]

52. Penalty for repeated trespass upon dam or tank.—If any animal belonging to any person shall trespass upon any such dam or tank as aforesaid, twice within the space of three months, then such person shall, over and above all other fees and charges, be liable to a penalty not exceeding five pounds.

FEES RECEIVABLE BY POUNDMASTER

53. Poundmaster's fees.—Every poundmaster shall be entitled to demand or retain (as the case may be) in respect of every animal impounded with him under this Ordinance, the fees enumerated in Schedule E: provided that no animal shall be considered to be impounded until it has been placed within the pound kraal.

54. Fees for herding or grazing.—Every poundmaster shall be entitled, over and above the fees mentioned in section 53, to demand or retain (as the case may be) for every day during which any such

animal has been herded, grazed, and fed by him a further fee in accordance with the scale prescribed in Schedule F.

55. Fees for keeping and feeding animals separately.—Every stallion above the age of two years, every bull above the age of two years, every sheep ram, goat ram or boar above the age of nine months, and every animal which, from contagious disease, dangerous vice, or other reason, is unfit to run with the other animals in the pound, shall be kept and fed separately; and the fees to be received or retained (as the case may be) by the poundmaster for the keeping and feeding of such animal, shall be in accordance with the scale prescribed in Schedule G.

56. To whom fees to go.—(1) The fees mentioned in sections 53, 54 and 55 shall be paid to the poundmaster, for his own use, by the owner of the animals impounded, and the said fees together with the compensation paid by the poundmaster in terms of this Ordinance shall be a charge upon such animals, and such animals may be detained by the poundmaster in security of the said fees and compensation: provided that—

- (a) if the value of the animals impounded is in excess of the total charges due thereon and ascertained under this Ordinance, and if the owner is unable to pay the said charges, then the poundmaster shall detain only so many of the said animals as may be reasonably sufficient to secure the total charges due upon all the animals, and shall deliver the remainder of the animals to the said owner;
- (b) any poundmaster who retains, after demand by the owner, any greater number of such animals than is reasonably necessary to secure such charges, shall be liable to the owner for any damages sustained by him on account of such retention.

[Sub-s. (1) amended by s. 6 of Ord. 7 of 1971.]

(2) In the event of the poundmaster being a salaried officer of a local authority the fees received by him in terms of sections 53 to and including 55 shall be paid by him into the revenues of such local authority.

[Sub-s. (2) amended by s. 7 of Ord. 8 of 1950.]

57. Fees for attending pound sales.—Every poundmaster or other person duly authorised to conduct the sale shall, for his attendance at every pound sale, as hereinafter provided, be allowed a fee of ten shillings, to be paid proportionately out of the proceeds of the animals sold at such sale; and if such proceeds be insufficient then the local authority shall pay to the poundmaster or such other person such amount as together with the sum received by him from the proceeds, amounts to ten shillings.

58. Fees for animals not branded.—In addition to the fees hereinbefore provided, every poundmaster whose pound is situated in a division in which the "Registration of Brands Act, 1890," is in force, shall receive such fee for every horse, head of cattle or ostrich above the age of one year, impounded in his pound, and bearing no registered brand, as the local authority concerned may determine, but in no case more than threepence per head.

ALTERATION OF RATES OF POUND FEES, COMPENSATION AND TRESPASS MONEY

[Heading amended by s. 7 of Ord. 7 of 1971.]

59. Alteration of tariff by local authority.—A local authority may from time to time alter any or all of the tariffs of fees and damages fixed in Schedules B, C, D, E, F and G to this Ordinance in respect of all pounds or of any individual pound in its area of control.

60. Effect of alteration.—Every such alteration of any of the said Schedules, when published as hereinafter provided, shall be of the same legal force as if it had formed part of the original Schedule, and shall be taken to be included in any reference made in this Ordinance to such Schedule.

61. Publication of altered tariff.—No such altered tariff shall take effect until it has been published in the *Provincial Gazette* and in some newspaper circulating in the division in the manner prescribed in sections 345, 346 and 347 of Ordinance No. 13 of 1917; and until such alteration is published by the local authority in manner aforesaid the tariffs fixed by the Schedules to this Ordinance

shall be in force.

62. Local authority to furnish poundmasters with copy of tariff as altered.—So soon as the local authority has framed and published an altered or amended Schedule hereinbefore provided, each poundmaster shall be furnished with a copy thereof by the local authority concerned.

SALE OF IMPOUNDED STOCK

63. Advertisement to be forwarded to local authority before sale of animals.—Whenever any impounded animal has not been released within six days from the date of its impoundment, the poundmaster shall forward to the local authority in whose area the pound is situated, an advertisement setting forth the species, marks and distinguishing peculiarities (if any) of such animal; and in regard to horses and cattle their colour also. Such advertisement shall notify that the animal therein mentioned will be sold at the next sale of impounded animals, and shall set forth the time and place of such sale.

64. Publication of advertisement.—Every advertisement or notice of the sale of impounded animals shall be published at least twice in a newspaper or newspapers circulating in the division; provided that the cost of such advertisement shall be recoverable from the owner of the impounded animal and shall be deemed to be part of the charges to be deducted under section 70 from the proceeds of the sale of any animal and recoverable from the owner of such animal if the said proceeds be insufficient to satisfy the fees and charges mentioned in section 70; provided that—

- (a) if such advertisement refers to more than one animal, the secretary or town clerk (as the case may be) shall in his discretion, distribute the cost of such advertisement *pro rata* to the animals referred to therein, and
- (b) if the owner of an impounded animal is unknown, and the proceeds of the sale do not cover the fees and charges aforesaid (but not damages), the local authority shall make good the deficiency.

[S. 64 amended by s. 8 of Ord. 8 of 1950.]

65. Copy to be posted at or near pound and sent to other poundmasters in division.—Every poundmaster, upon sending such advertisement to the local authority, shall post a copy of it in some conspicuous place at or near his pound, there to remain until the day of the sale; and the local authority shall also send a copy by post to every other poundmaster in the division; and every poundmaster receiving such a copy of an advertisement shall post the same in a conspicuous place at or near his pound, there to remain until the date of sale therein mentioned.

66. Time and place of sales.—The sales of animals impounded in the several pounds of each division shall take place, as nearly as may be, at intervals of two weeks and shall be held at such places as the local authority may appoint; provided that—

- (a) the dates of sales shall, as far as possible, be so arranged as to allow notice of at least seven days to be given thereof;
- (b) a notice in respect of each sale, giving details of the animals to be sold and the date of the sale, shall be posted by the poundmaster for public information at the pound for seven days before the sale takes place.

67. Who to be auctioneer.—Every sale of impounded stock shall commence at the hour of ten in the morning or as soon thereafter as may be deemed desirable by the auctioneer, on the day fixed; and at every such sale the poundmaster or some other person duly authorised by the local authority concerned shall act as auctioneer. No person conducting a pound sale shall be directly or indirectly interested in any purchase at any sale so held by himself.

[S. 67 amended by s. 9 of Ord. 8 of 1950.]

68. Animal to be impounded at least two weeks before sale.—Except with the consent of the owner no animal shall be put up at any such sale unless it has been impounded for at least two weeks.

69. Animals to be sold singly, except sheep and goats.—At every such sale, all animals, except sheep and goats, shall be sold singly. Sheep and goats shall be sold in lots of not more than ten. In no case shall sheep and goats, or sheep or goats with different marks or brands, be sold together in the same lot.

70. Sales shall be for cash and how proceeds to be dealt with.—At every such sale the animals shall be sold for cash; and the proceeds, less the amount of pound fees and other fees and charges properly payable in respect of such animals and less the amount of any damage due or assessed under this Ordinance, shall be forthwith upon receipt, handed by the poundmaster to the local authority, to be paid to the owners of the animals sold according to their respective rights; provided that—

- (a) if in any case the animals sold do not realise sufficient to satisfy all such fees, charges and damages as aforesaid, the proceeds shall be first applied to the payment of the compensation due to the poundmaster; and if the said proceeds be insufficient to satisfy such compensation, then the balance of compensation shall be paid to the poundmaster by the local authority, and the balance of compensation and other fees, charges, or damages, shall be recoverable from the respective owners by action in any competent court;

[Para. (a) amended by s. 8 of Ord. 7 of 1971.]

- (b) any money, being the proceeds of the sale of any impounded animal sold as aforesaid, which remains in the hands of the local authority for a period of twelve months, without being claimed by the owner of such animal, shall become the property of such local authority;

- (c) every poundmaster shall, after the sale of any head of cattle, horse or ostrich, and before delivery to the purchaser brand the same with such distinguishing mark as may be fixed upon by the local authority; for which branding he shall be allowed a fee of two shillings and sixpence in each case. Every poundmaster contravening this section shall be liable to a fine of £2 in each case;

- (d) it shall be competent for the local authority to make good to any poundmaster any loss which he may incur in the keeping of animals in cases where the sale price realised does not cover the costs incurred;

- (e) it shall be competent for any poundmaster after compliance with the procedure prescribed by section 12 relating to diseased animals to destroy any aged or permanently unfit animal presented at the pound;

- (f) if an animal dies in the pound and the owner cannot be traced the expenses of burying the carcass shall be borne by the local authority;

- (g) the local authority may fix a reserve price for any animal offered for sale;

[Para. (g) inserted by s. 10 of the Ord. 8 of 1950.]

- (h) the auctioneer may withdraw any animal from the sale if the highest bid received is not in his opinion satisfactory, irrespective of whether or not a reserve price has been fixed by the local authority.

[Para. (h) inserted by s. 10 of the Ord. 8 of 1950.]

GENERAL

71. Illegal impounding and penalties therefor.—Any person who illegally impounds any animal shall be guilty of an offence, and shall in addition be liable to make good to the owner all damages, costs and charges arising out of such proceeding, together with twenty cents for every horse or head of cattle, and one cent in respect of every other animal so illegally impounded.

[S. 71 amended by s. 5 of Ord. 14 of 1941 and by s. 3 of Ord. 18 of 1960.]

71bis. Penalty for rescue of animals.—Any person who rescues, or incites or assists any other

person to rescue any animals lawfully impounded or lawfully seized for the purpose of being impounded, shall be guilty of an offence and liable to a fine not exceeding ten pounds.

[S. 71*bis* inserted by s. 11 of Ord. 8 of 1950.]

72. When property trespassed on is in different area from that of the proper pound and the rates of the two areas differ—In case any property trespassed upon is situated in a different local authority area from that in which the pound proper for the receipt of the trespassing animals is situated, and in case the rates of compensation and trespass money in the two areas shall be different, then compensation and trespass money shall be payable according to the rate for the area in which the pound is situated.

[S. 72 amended by s. 12 of Ord. 8 of 1950 and by s. 9 of Ord. 7 of 1971.]

72*bis*. Recovery of loss by local authority in respect of animals impounded from area of another local authority.—Any loss suffered by a local authority as a result of the impounding in a pound under its management and control of animals found trespassing within the area of jurisdiction of another local authority, may be recovered by such firstmentioned local authority from such other local authority.

[S. 72*bis* inserted by s. 13 (1) of Ord. 8 of 1950.]

73. Molestation of animals on owner's property.—Every person who shall wrongfully molest, drive or scatter the animals of another person when upon the property of such lastmentioned person, or wrongfully take away such animals from off the land of their owner, shall be guilty of an offence and liable upon conviction to a penalty not exceeding ten pounds.

74. Reservation of action for trespass.—Nothing in this Ordinance contained shall be construed so as to prevent any person complaining of trespass from seeking redress according to law in any competent court: provided that—

- (a) no person (i) who has once claimed damages under section *thirty* or *thirty-one* shall be competent afterwards to require an assessment by a justice of the peace or a referee and arbitrators; or (ii) who has once claimed either such damages or such assessment shall be competent afterwards to seek redress by legal process;
- (b) whenever any complainant has decided to proceed at law for the recovery of damages for any alleged trespass, the owner of the animals impounded for such alleged trespass shall be entitled to release the same upon payment of pound fees, and upon giving security to the satisfaction of any magistrate or justice of the peace, for the payment of any damages and costs which the complainant may recover.

75. Recovery of penalties.—(1) All penalties imposed by any of the provisions of this Ordinance shall be recoverable in the court of the magistrate of the district in which the offence has been committed, and may be proceeded for by any person in regard to whose property the act or omission entailing any such penalty has taken place.

(2) Any penalty which has been incurred by any act or omission which does not affect the property of any particular person may be proceeded for by any person whomsoever.

(3) All penalties, when recovered, shall be paid to the person proceeding for the same.

76. General penalty.—Every person who has contravened any of the provisions of this Ordinance, in regard to which no penalty is expressly provided, shall incur and be liable to a penalty not exceeding five pounds.

77. Costs of prosecution or defence.—It shall be lawful for any Magistrate's Court and for any Court to which an appeal from such Magistrate's decision has been brought, to order that the costs of prosecution or defence, and the costs of such appeal, shall be paid either by the person proceeding for the recovery of a penalty under this Ordinance, or by the person accused of a contravention of any provision of the Ordinance; or it shall be lawful to make no order as to costs. The costs referred to in this section shall be such as would be taxed and allowed if the proceedings were in the nature of a civil action.

78. Imprisonment on non-payment of fine.—If any person convicted of an offence against any

provision of this Ordinance does not pay the penalty imposed, he may be sentenced to imprisonment with or without hard labour for any period not exceeding two months, unless any other term of imprisonment be herein provided in respect of the non-payment of such penalty.

79. Judicial officer may impound and remove animals alleged to have been stolen.—Any judicial officer as defined by the Magistrate's Court Act, 1917 (Act No. 32 of 1917), may send to any pound in the district within his jurisdiction any animals alleged or proved to have been stolen, and may remove or authorise the removal of the same at his discretion. It shall be the duty of the poundmaster to receive any animals so sent to his pound. Such animals shall not be subject to the provisions of this Ordinance relating to the sale of impounded animals but shall be dealt with in such a manner as the judicial officer of the district may direct. No compensation shall be payable in respect of such animals; and in the absence of any special agreement as to the charge to be made for keeping the said animals, the poundmaster may charge only the sustenance fees set forth in Schedule F. Any sum due in terms of this section for keeping or sustaining such animals shall be a first charge upon the said animals and shall be paid before the poundmaster is bound to deliver the animals.

[S. 79 amended by s. 10 of Ord. 7 of 1971.]

SPECIAL PROVISIONS RELATING TO DONKEYS

80. Donkey stallion may be specially marked and registered. Donkey stallion not specially marked may be destroyed if found trespassing.—(a) The owner of any donkey stallion within the area of any local authority shall be entitled to register such stallion, with a description thereof, at the office of the local authority on payment of a fee of fifty shillings. Upon such registration the local authority shall cause the stallion to be marked or branded with such special distinctive mark or brand as may be prescribed by the Administrator by regulation to be used by all local authorities.

(b) Whenever any donkey stallion is found trespassing within the area of a local authority and being over the age of eighteen months does not bear the distinctive mark or brand denoting registration, the proprietor of the land may cause the said stallion to be destroyed.

(c) Nothing in this section contained shall be deemed to affect the right of any person to impound any donkey stallion under any other provisions of this Ordinance.

81. Impounding of donkeys.—Notwithstanding anything contained in this Ordinance, whenever any donkey has been impounded the poundmaster shall forthwith post or cause to be posted at the gate of the pound, at the office of the local authority and at the nearest police station a notice setting forth a description, the marks and distinguishing peculiarities (if any) of such animal and fixing a date, not being less than seven days from the date of the impounding, when the said animal will be sold. If at the sale so advertised and held no offer is made for the purchase of the animal it may be destroyed by the poundmaster unless it can be disposed of by private treaty at such price as the local authority may decide. For the purposes of this section "donkey" means a stallion, gelding or mare.

[S. 81 amended by s. 14 (a) and (b) of Ord. 8 of 1950.]

82. Sections 80 and 81 inapplicable to certain divisions.—The provisions of sections 80 and 81 shall not be of force and effect in the divisions of Vryburg, Kuruman, Mafeking and Barkly West unless and until the Administrator has upon the application of all the local authorities in each of the said divisions applied them in any one or all of such divisions.

82bis. Application of Ordinance.—The provisions of this Ordinance shall not apply within any area where there are in force any regulations which relate to pounds and which have been made by a local authority under the powers conferred by the amendments enacted by the Local Authorities Pounds Ordinance, 1962.

[S. 82bis inserted by s. 10 of Ord. 23 of 1962.]

83. Short title.—This Ordinance may be cited as the Pounds Ordinance, 1938.

SCHEDULE A

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LAWS REPEALED

<i>No. and Year</i>	<i>Title</i>	<i>Extent of Repeal</i>
15 of 1892	"The Pounds and Trespasses Act, 1892"	The whole.
10 of 1912	"Cape Municipal Ordinance, 1912"	Section 305.
13 of 1917	Divisional Councils and Roads Ordinance, 1917	Section 328.
10 of 1921	Village Management Boards Ordinance, 1921	Section 90.
21 of 1925	Pounds and Trespasses (Amendment) Ordinance, 1925	The whole.
13 of 1935	Village Management Boards Amendment Ordinance, 1935	Section 5.

SCHEDULE B

RATE OF COMPENSATION

For all animals delivered to the pound, whether one or more, per kilometre or portion fifteen cents of a kilometre

[Schedule B substituted by s. 11 of Ord. 7 of 1971.]

SCHEDULE C

TRESPASS ON CULTIVATED LAND

Description of animal	If land enclosed with sufficient fence	If land not so enclosed
	s. d.	s. d.
Horses, cattle, ostriches and pigs per head	2 6	1 6
Goats per head	1 0	0 6
Sheep per head	1 0	0 6

SCHEDULE D

TRESPASS ON UNCULTIVATED LAND

Description of animal	If land enclosed with sufficient fence	If land not so enclosed
	s. d.	s. d.
Horses, cattle, ostriches and pigs per head	1 0	0 6
Goats and sheep per head	0 3	0 1

SCHEDULE E

POUND FEES

	s.	d.
Horses, cattle, pigs and ostriches per head	1	6
Sheep and goats, per head	0	1

SCHEDULE F

SUSTENANCE FEES

	s.	d.
Ostriches per head, per diem	1	6
Horses, cattle and pigs per head, per diem	2	0
Sheep and goats per head, per diem	0	6

SCHEDULE G

FEEES FOR ANIMALS TO BE SEPARATELY HERDED

	s.	d.
For every stallion, per diem	4	0
For every ostrich, per diem	1	6
For every bull, per diem	2	0
For every boar, per diem	1	6
For every sheep ram, goat ram, or other separated animal, per diem	0	6
