



Memo

To: Earl Stoles
From: Sharifa Ally, Legal Adviser
Date: 21 September 2009
Subject: Noise Control Regulation- Fireworks

Summary

Mr. Stoles of the JHB City Safety Programme (the "department") has advised us that their organisation is updating the CoJ Fireworks Safety Flyer.

However, in the course of doing so, they have realized that there may be a conflict between various pieces of legislation. While the Emergency By-laws make provision for persons to light fireworks at specific dates and times without permission, the Gauteng Provincial Noise Control Regulations (published under Section 25 of the Environment Conservation Act 1989) require an application in writing for noise exemption for the use of fireworks.

The Law

In terms of section 156(3) of the Constitution;

Subject to section 151(4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.

Section 151 (4) states that,

The national or provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

According to section 149;

Status of legislation that does not prevail-a decision by a court that legislation prevails over other legislation does not invalidate that other legislation, but that other legislation becomes inoperative for as long as the conflict remains.

Section 9 of the Noise control Regulations state;

No person shall discharge fireworks in a residential area in a manner, which may cause a noise nuisance.

Section 14 (d) also states that

A local authority may impose such appropriate conditions as it deems fit when granting any permission or exemption in terms of these regulations including the specification of times and days when activities that may cause noise are permitted or prohibited.

Section 17 states,

(2) Any person may by means of a written application, in which the reasons are given in full, apply to the local authority concerned for exemption from any provision of these regulations.

(3) The local authority may-

- (a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted shall be stipulated therein;*
- (b) alter or cancel any exemption or condition in an exemption;*
- (c) refuse to grant an exemption*

In addition, section 32 of the Emergency Services By-Laws makes it incumbent on any person wishing to present a *fireworks display* to apply to the Chief Fire Officer, 14 days prior to such display.

Legal Implications

There does not appear to be a conflict between the EMS By-Laws and the Noise Control Regulations as will appear under.

(i) Lighting or igniting of fireworks

S30 (3) of the By-Law allows for the lighting or igniting of fireworks on specific days and times. This is an exemption in terms of S17 above for which the Local Authority *is deemed* to have granted written permission. **It would be impractical for every person who wished to ignite fireworks in his backyard to apply for permission. This could not have been the intention of the legislature.**

However, should a person wish to ignite fireworks outside the above stipulated periods, then it seems that written permission would have to be sought.

(ii) Fireworks Display

The By-Laws specify that permission *is* needed to present a fireworks display

(S32). A “fireworks display” is defined as “the use of fireworks for a public display.” Permission is therefore needed for all fireworks displays’ even if they are during the period stipulated in S30 (3) of the EMS By- Laws. This needs to be stipulated in the safety flyer.

CoJ Fireworks Safety flyer

The department should amend the CoJ Fireworks Safety Flyer to provide for the above.

If time permits, perhaps the language of the flyer should be simplified to cater for the public. The department is welcome to provide Legal and Compliance with the amended flyer for our comments.

**SHARIFA ALLY
LEGAL ADVISER**

Tel: 011-407-6418

Fax: 011-339-2020