

# BA-PHALABORWA MUNICIPALITY

## PUBLIC OPEN SPACES BY-LAWS

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#### 1. Definitions

In these by-laws, unless the context otherwise indicates -

**“Council”** means the Ba-Phalaborwa Municipal Council and any officer employed by the Council, acting by virtue or any power vested in the Council in connection with these by-laws and delegated to him or her;

**“enforcement officer”** means an authorized official of Council or a constable or officer of the South African Police Service;

**“public open space” means-**

- (a) any park, garden, flower bed, grass plot, pleasure ground, plantation, side-walk, temporary enclosures, or other public open spaces and town land within the municipality, under the control of the Council and include all buildings, improvements, ground and spaces comprised in such areas;
- (b) any land which is owned by an organ of State and which has in terms of any zoning scheme of an organ of State been set aside or demarcated for the purpose of conservation; or
- (c) any undeveloped land which is owned by an organ of State and which has not yet been set aside or demarcated by an organ of State for the purpose of conservation.

## **2. Principles and objectives**

AS public open spaces are held in custody by the Ba-Phalaborwa Municipal Council as an Organ of State for the use by all people within the municipal area and the use by future generations,

AND AS all people are to have access to public open spaces on an equitable and non-discriminatory basis,

AND AS the existence and future existence of fauna and flora and other organisms in public open spaces is to be ensured,

AND AS uncontrolled access and use of the public open spaces may be to the environmental detriment of the public open spaces,

AND AS all residents in Ba-Phalaborwa Municipality have the right to an environment that is safe and not harmful to his or her health or well-being;

AND AS Council must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities,

THESE by-laws have the following objectives:

- (a) To make available to all people in the municipal area the use of public open spaces;
- (b) to manage public open spaces in an environmentally sustainable manner, and for these purposes may prescribe fees for access to and use of the public open spaces;

- (c) to encourage the community to care for public open spaces and to protect the fauna and flora and other organisms therein;
- (d) to restrict, where necessary, access to and the use of public open spaces if necessary to-
  - (i) protect any fauna, flora, other living organisms or any other feature or aspect of the public open space against harm injury, vandalism, destruction, or for any other reason which relate to the principles and objectives of these by-laws; and
  - (ii) undertake any activity necessary to maintain or develop the public open space;
- (e) to maintain and develop public open spaces, including the-
  - (i) the erection, construction or demolition of a building or other structure on public open space; and
  - (ii) demarcation of public open space in which particular activities are prohibited;
- (f) to stipulate what the duties and obligations are of people who access and make use of public open spaces, and to enforce the provisions of these by-laws.

### **3. Application of By-laws**

These by-laws apply to all public open spaces that fall within the jurisdiction of the Ba-Phalaborwa Municipal Council, but do not apply to caravan Parks, cemeteries, and sporting grounds and arenas.

### **4. Legislative framework**

These By-laws fall within the legislative framework of the:

- (a) Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (c) National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (d) Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
- (e) Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

**5. Use of public open space and application to use public open space**

- (1) All land laid out or which may in future be laid out as public open space, where the land is in any way vested in or under control of the Council, must be maintained by Council and may be used solely for the purpose for which the same are laid out or otherwise reserved.
- (2) The Council reserves the right to set aside public open space on occasions for special purposes on such conditions as it may prescribe and the Council may charge a fee, as prescribed in the Schedule, for the use of the public open space, or may make it available free of charge on such occasions or grant free admission to selected persons.
- (3) A person who wishes to make use of public open space as contemplated in subsection (2), must lodge an application form to reserve the public open space, and for these purposes must-
  - (a) complete the necessary application form and comply with all the other requirements and conditions which are specified in application form;
  - (b) lodge two copies of the application form at the Municipal Manager's offices;
  - (c) obtain Council's approval before he or she makes use of the public open space.
- (4) An application must be lodged not less than six weeks before the date on which the public open space is required by a person.
- (5) The application must contain the following particulars:
  - (a) particulars of the public open space intended to be used;
  - (b) the period for which the public open space is required;
  - (c) the date time when the public open space will be vacated;
  - (d) the expected number of people who will be attending the proposed occasion;
  - (e) the intended use of the public open space;
  - (f) an undertaking by the person who has lodged the application that he or she will comply with all conditions imposed by Council and with all the provisions of these by-laws.
- (6) Council, when it considers the application, may have, in addition to other relevant factors, due regard to the following:

- (a) the principles and objectives of these by-laws;
  - (b) that the public open space may be used for lawful purposes only;
  - (c) that the use of the public open space will not constitute a nuisance or annoyance to the other users of the public open space or to the occupiers of neighbouring premises;
  - (d) that the use of the public open space will not constitute a danger to any person or property or negatively affect the environment;
- (7) Council may approve the use of the public open space subject to any condition it may deem expedient, or may refuse consent;
- (8) Council must, within seven days after the application form has been lodged, in writing notify the applicant if the application has been approved or refused, and-
  - (a) if the application is refused, Council must supply to the applicant the reasons why the application was refused; or
  - (b) if the application is approved, Council must forward a notice of approval and one set of the application form to the applicant; and must specify in the notice of approval the conditions to which the use of the public open space is subject.
- (9) Council must keep a register which is open to public inspection at all reasonable hours and which contains the following particulars of the public open space for the use of which approval was granted:
  - (a) the application which was made to Council for the use of the public open space;
  - (b) the name and address of the applicant;
  - (c) the date of application;
  - (d) the prescribed fee, as stipulated in the Schedule to these by-laws, for use of the public open space, if a fee is payable;
  - (e) the decision of Council; and
  - (f) the conditions relating to the use of the public open space.
- (10) An applicant may not before Council's approval has been received by him or her, advertise or announce the function or activity for which he or she has lodged an application.

**6. Cancellation, postponement or extension of reservation**

- (1) A person who has lodged an application for the reservation of a public open space, may cancel the application, and the following apply in the instance where the person has paid the fee as contemplated in section 5(9)(d):
  - (a) if a reservation is cancelled 30 days or more before the date of the reservation, Council must fully refund the person with the fee already paid;
  - (b) if a reservation is cancelled less than 30 days but 15 days or more before the date of the reservation, Council must be refund the person with 50% of the fee already paid; and
  - (c) if a reservation is cancelled 14 days or less before the date of reservation, the person is not entitled to any refund of the fee already paid.
- (2)
  - (a) After approval has been given by Council, a person may apply for the postponement of the reservation to a later date.
  - (b) Approval by Council of the postponement does not result in a penalty or forfeiture of any fees already paid.
  - (c) Postponement may be refused if the public open space has been reserved for the use by another person or Council.
- (3) A person may apply for an extension of the period of use of the public open space, and-
  - (a) the application for extension must be in writing and lodged at the Municipal Manager's offices;
  - (b) the provisions of subsection 5(3) do not apply; and
  - (c) the public open space must be available, in that Council has not reserved the premises or amenities for the use by another person or Council.

**7. Prohibited behaviour in public open space**

No person may, in a public open space-

- (a) remove, damage or injure any fountain, statue, monument, bust, post, chain, railing, fence, seat barrier, gate, lamp-post, notice board or plate, guard house, house, building, shed, urinal, water-closet, flag,

mark or other meter or thing, or deface or disfigure the same by pasting or affixing to it in any way any bill, placard or notice, or cutting, writing, stamping, printing, drawing, or marking thereon;

- (b) cut, remove, dig up, fell, burn, pluck, break, climb up or upon or cause damage or injury to timber or to any tree, shrub, brushwood, fencing post, pole, fern, turf, grass, fruit, flower or plant;
- (c) take, dig, cut, break, damage or remove any gravel, sand, sod, clay, mould, soil, water or other substance;
- (d) light any fire or burn or do any act which might cause any timber, wood, brushwood, plant, paper, rubbish, or other substance to burn;
- (e) go into, or attempt to go into any public open space, or walk on any flower-bed or any grass plot on which walking is prohibited;
- (f) make any encroachment or make or attempt to make any enclosure;
- (g) erect or place any post, rail, fence, pole, peg, spike, tent, booth, screen, stand, swing, or other building, erection or obstruction of any kind whatsoever without the consent of the Council in writing under the hand of the Municipal Manager;
- (h) deposit or leave any refuse, building rubble, garden waste, rubbish, paper, dead animal or other matter or thing;
- (i) turn out to graze or feed or allow any animal to stray or remain in the public open space, except where the prior consent of the Council under the hand of the Municipal Manager has been obtained;
- (j) drive, draw or propel any cycle or vehicle, other than a wheeled chair or a perambulator drawn or propelled by hand and used solely for the conveyance of a child or children or an invalid, except in the places and at the times which shall be defined by the Council's by-laws or by notices affixed or set up at or near the several entrances to any public open space;
- (k) drive any cycle, vehicle or motor car on lanes or drives, as may be set aside by notice, at a rate exceeding 8km/h;
- (l) draw, propel, stand or place upon or over any part of a flower-bed or lawn any vehicle on wheels or machine whatsoever;

- (m) use any part of a public open space for shaking, beating, brushing or cleaning any carpet, rug or other thing, or for washing, drying, or bleaching linen, clothes or other articles;
- (n) wash clothes or other things in any pond, fountain or ornamental lake or otherwise pollute any water therein;
- (o) bath or wash any dog or other animal, or allow any dog or other animal to be in any pond, fountain or ornamental lake;
- (p) catch or snare birds or lay or place any net, snare or trap for the taking of bird's eggs or nests, or shoot or chase or attempt to shoot any bird or animal, or throw any stone or stick or other missile, with intent to injure, frighten or catch any bird or animal, or in any way interfere with any fish water-fowl, or other animal;
- (q) fire any firearm, discharge any firework, catapult or sling, throw any stone, stick or other missile, use any squirt, syringe or other instrument, or do anything which may endanger or be deemed a nuisance, obstruction or annoyance to the public;
- (r) brawl, fight, discharge any firework, catapult or sling, throw any stone, stick or other missile, use any squirt, syringe or other instrument, or do anything which may endanger or be deemed a nuisance, obstruction or annoyance to the public;
- (s) sell or offer or expose for sale or hire any commodity or article or distribute any pamphlet, book, handbill or other printed or written matter, without the written consent of the Council, under the hand of the Municipality Manager, having been first obtained:
- (t) use, intrude upon or attempt to intrude upon any water closet, urinal or other place of convenience provided for the opposite sex;
- (u) play or make preparation to play cricket, football or any other game, except on the places and at the times set apart for such games by the Council;
- (v) play or make sounds on any musical instrument, except with the prior written consent of the Municipal Manager;
- (w) deliver, utter or read aloud any public speech, prayer, book or address of any kind, or sing any sacred or secular song or hold or take part in



any public meeting or assemblage, except with the prior written consent of the Municipal Manager;

- (x) assault, resist or aid or incite any person to assault or resist any employee of the Council or the other person in the execution of his or her duty or the lawful exercise of any authority in terms of these by-laws;
- (y) refuse to leave any public open space after the time of closing the gates, when requested to do so by any employee of the Council or police constable, or unlawfully remain therein after the gates are closed or climb on or over the gates, fences or railings, or enter or leave otherwise than through one or other of the authorised means of ingress or egress;
- (z) take any animal into or have any animal in any public open space in contravention of a notice exhibited in the public open space, prohibiting the admission of animal or prohibiting the admission of dogs not led by a chain or other sufficient fastening;
- (aa) smoke in any public open space which, by notice affixed on a conspicuous place at or near the entrance to such place or building bearing the words:" NO SMOKING", has been set aside as a smoking-free zone;
- (bb) obstruct, disturb, interrupt or annoy any person in the proper use of the public open space; or
- (cc) paste or affix in any way, bills, placards or notices of any nature whatsoever, on any tree, shrub or bush or on any trees along any lane or drive.

## **8. Hours**

The Council must, by means of notices posted at or near the entrance gates, indicate the hours during which a public open space is closed to the public, and may for any special purpose by means of such notice, close any public open space, or any part thereof, or any building therein, to the public for such time as it may from time consider necessary or expedient.

**9. Remaining overnight in public open space and parking of vehicles**

- (1) No person may stay overnight in any public open space, road reserve or street reserve within the municipality or park a motor vehicle in or any such place with the intention to stay overnight in such motor vehicle or stay overnight in a motor vehicle which has parked in or on any such place.
- (2) No person may park a motor vehicle in or on any public open space, on such places specially provided for by the Council for the parking of motor vehicles.

**10. Exclusion or removal of person**

- (1) An enforcement officer may exclude or remove from any public open space a person committing a breach of these by-laws, and a person commits an offence if he or she-
  - (a) after being told by the employee of the Council or constable to go there from, neglects or refuses to go; or
  - (b) having left the place after being told as aforesaid to go there from, or having been removed there from as aforesaid, returns to the public open space within 24 hours.
- (2) An enforcement officer may issue a notice of contravention on a person as contemplated in section 11.

**11. Notice of contravention**

- (1) If a person contravenes-
  - (a) a provision of section 7 (*Prohibited behaviour in public open space*);
  - (b) a condition contained in the notice of approval as contemplated in section 5(8)(b); or
  - (c) section 10 (*Exclusion or removal of person*),an enforcement officer may serve on that person a notice of contravention in terms of this section, or may exercise any power that may be exercised by a peace of officer under the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

- (2) A notice of contravention must-
  - (a) specify, at the time when the notice is issued, the name and residential and postal address, if either or both of these be known, of the person on whom the notice is served
  - (b) state the particulars of the contravention;
  - (c) specify the amount of the penalty payable in respect of that contravention and the place where the penalty may be paid; and
  - (d) inform the person that he or she must-
    - (i) within 28 calendar days of the date of service of the notice, pay the penalty; or
    - (ii) within 7 calendar days of the notice, inform Council in writing that he or she elects to be tried in court on a charge of having committed an offence.

## **12. Appeal**

- (1) A person whose rights are affected by a decision of an official may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.
- (2) The municipal manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (3) When the appeal is against a decision taken by-
  - (a) a staff member other the Municipal Manager, then the Municipal Manager is the appeal authority;
  - (b) the Municipal Manager, then the Executive Committee is the appeal authority; or
  - (c) a political structure or political officer bearer, or a Councillor, then the Council is the appeal authority.
- (4) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable time.

### **13. Penalty**

A person who contravenes any provision or fails to comply with any provision of this by-law commits an offence and shall on conviction be liable to-

- (a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and imprisonment; and
- (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued; and
- (c) a further amount equal to any costs and expenses found by the court to have been incurred by Council as result of such contravention or failure.

### **14. Operation of by-laws**

These by-laws are deemed to be in addition to and not in substitution of any by-law in force within the municipality, except where such by-law is in conflict with these by-laws, in which case the provisions of these by-laws shall prevail.

### **15. Short title**

This By-law is called the Environment (Open Space): Parks, Gardens and Public Open Spaces By-law of the Ba-Phalaborwa Municipality, 2010.

### **16. Pandemic Compliance**

This policy will be implemented in line with any pandemic guidelines.

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**ACTING MUNICIPAL MANAGER**  
**JB SELAPYANE**

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**DATE**

**COUNCIL RESOLUTION:**

**DATE:**