

BA-PHALABORWA MUNICIPALITY

PUBLIC PARKS BY-LAWS 2017

WHEREAS section 156 (2) and (5) of the Constitution of the Republic of South Africa, 1996 provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for , or incidental to, the effective performance of its functions; AND WHEREAS Part B of Schedule 5 to the Constitution lists local amenities and municipal parks and recreation as local government matters; AND NOW THEREFORE BE IT ENACTED by the Ba-Phalaborwa Municipality as follows:-

TABLE OF CONTENTS

Section

1. Definition
2. Delegation and appointment
3. Maximum numbers of persons
4. Admission and visiting a public park
5. Entrance fees
6. Dumping and littering
7. Liquor and food
8. Animals
9. Use of public parks
10. Trees in public parks
11. Safety and order
12. Water
13. Vehicles
14. Games
15. Improper or indecent behaviour
16. Powers of an authorized official
17. Amendment, change and addition of a note or pictogram
18. Offences and penalties
19. Short title
20. Pandemic compliance

1. Definitions

In this By-law, unless the context otherwise indicates –

“animal” includes any mammal, bird, fish, reptile, insect, amphibian or invertebrate;

“authorized official” means a member of staff of the municipality delegated by the Municipal Manager and the Municipal Manager Community and Social Services, or appointed by the Municipal Manager to implement the provisions of the By-law, or any appointed external service provider referred to in section 76 (b) of the Local Government: Municipal Systems Act, 200 (Act No. 32 of 2000) and includes a law enforcement officer or traffic official of the municipality who has been declared a peace officer in terms of section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977), acting when on duty and properly identified as such;

“Constitution” means the Constitution of the Republic of South Africa Act, 1996;

“Council” means the council of the Ba-Phalaborwa Municipality being a council as provided for in terms of section 18 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or any committee, any sub-council or any councillor of council, acting under delegated or sub-delegated authority of the Council;

“Councillor”, means the member of the Council;

“Municipality” means Ba-Phalaborwa Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), in Provincial Notice 479 of 2000 and published in Provincial Gazette Extraordinary 5588 dated 22 September 2000;

“Municipal Manager” means the person appointed by the Council in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“notice” means a written notification, or a pictogram issued in terms of this By-law, prominently and legibly displayed at the entrance to or in any facility or part thereof to which it is intended to apply;

“public park” means –

- (a) any botanical or other garden, play ground, zoned public open space managed by the Department of Community and Social Services in the municipality, or a park owned or leased by the municipality, including any portion thereof and any facility or apparatus therein or thereon, but excluding any public road or street; and
- (b) any botanical, other garden play ground which is lawfully controlled and managed in terms of an agreement by a person other than the Council; “Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); “this By-law” includes the Schedules hereto;

“Senior Manager” means the employee of the Municipality in charge of public parks of the municipality;

“vehicle” means any self-propelled vehicle and includes-

- (a) a trailer; and
- (b) a vehicle having pedals and an engine or an electric motor as an integral part thereof or attached thereto which is designated or adapted to be propelled by means of such pedals, engine or motor, or both such pedals and engine or motor, but does not include –
 - (i) any vehicle propelled by electric power from storage batteries and which is controlled by a pedestrian; or
 - (ii) any vehicle with a mass not exceeding 230 kilograms and specially designed and constructed, and not merely adapted, for the use of any person suffering from some physical defect or disability and used solely by such person.

2. Delegation and appointment of authorized officials

- (1) The Municipal Manager may delegate any of his or her powers or assign any of his or her duties in terms of this By-law to any official of the municipality.
- (2) The Municipal Manager may delegate any of his or her powers or assign any of his or her duties to any official of the municipality.
- (3) Subject to the recruitment policies of the municipality the Municipal Manager may appoint authorized officials to exercise and perform certain powers and duties in terms of this By-law.

3. Maximum numbers of persons

- (1) The Municipal Manager may determine the maximum number of visitors who may be present at a specific time in a public park, provided that different numbers may be so determined for different parks and for different event.
- (2) The numbers contemplated in subsection (1) must be made known by the Municipal Manager by means of a notice.

4. Admission to and visiting a public park

- (1) A person who is admitted to gain access or visit a public park must, subject to the provisions of this By-law, observe and comply with all notices displayed in a public park or in the entrance thereto and obey any instructions given to him or her by the authorized official.
- (2) Should a person fail to observe and comply with a notice or any instructions referred to in subsection (1), the Ba-Phalaborwa Municipality shall not be liable for damage or any injury suffered while such person is visiting the public park.
- (3) A public park is, subject to the provisions of this By-law, open to the public on the times determined by the Municipal Manager, provided that different times may be determined in respect of different public parks.
- (4) No person shall enter or leave an enclosed public park at a place other than that indicated for that purpose.
- (5) The conditions times and places contemplated in subsections (1), (2) and (3) shall be made known by the Municipal Manager by means of a notice.

5. Entrance fees

- (1) Subject to the provisions of this By-law, every person shall have free access to a public park.
- (2) Despite subsection (1), Council may, in terms of the Tariff By-law prescribe fess for entering a public park in such special circumstances as determined by it, and such fees shall be made known by means of a notice.

6. Dumping and littering

No person shall in a public park – (a) dump, drop, bury or place any refuse, rubble, material or any object or thing; or (b) permit any dumping, dropping, burying, placing of any refuse, rubble, material or any object of thing, except a container identified for that purpose in the park.

7. Liquor and food

- (1) No person shall bring into, consume, brew, store or sell in a public park any liquor or any other alcoholic or intoxicating substance.
- (2) No person shall in a public park, contrary to a notice, cook or prepare food of any kind whatsoever, except at places set aside for such purposes by notice.
- (3) The preparation and cooking of food at places set aside by notice for such purpose in or at a public park shall be done in a clean and sanitary manner.
- (4) No animal may be killed, skinned or slaughtered in a public park without the written consent of the Municipal Manager having first been obtained.

8. Animals

- (1) No person shall bring any dead or alive animal into a public park except in accordance with the directions of the Municipal Manager provided that different directions may be determined in respect of different public parks and different types of animals.
- (2) The directions contemplated in subsection (1) shall be made known by means of a notice.
- (3) Carcasses may not be buried in a public park but must be disposed of at the owner's expense and in a manner approved by the Council.

9. Use of public parks

- (1) No person shall in a public park without the written permission of the Municipal Manager or contrary to any conditions which the Municipal Manager may impose when granting such permission –
 - (a) arrange or present any public entertainment;
 - (b) display or distribute any pamphlet, placard, painting, book, handbill, sign, advertisement board or any other printed, written or painted work;
 - (c) arrange or hold a public gathering or procession, or any exhibition or performance;
 - (d) conduct any trade, occupation or business;
 - (e) display, sell or rent or present for sale or rent any wares or articles;
 - (f) hold an auction;
 - (g) off-load or store building or other material.
- (2) Subject to any other law, the written permission contemplated in subsection (1) shall be refused only if anything referred to in subsection (1)(a) to (g) –
 - (a) is likely to give rise to -
 - (i) public rioting;
 - (ii) the disturbance of public peace;
 - (iii) the committing of an offence;
 - (iv) the committing of an indecent act;
 - (v) risks that compromise safety and security; or
 - (vi) a situation where a planned activity in any area of jurisdiction of the Ba-Phalaborwa Municipality is taking place at the same time as a planned activity in the park, and the activity planned to take place in the park is deemed to have a detrimental impact on the ability of the Municipal Manager to ensure safety and security.
 - (b) is detrimental to the public or the users of , or visitors to, the public park; or
 - (c) is likely to damage or destroy the amenities, wildlife or plant material in the park.

10. Trees in public parks

- (1) No person other than an authorized official shall –
 - (a) Plant or prune a tree or shrub, or in any way cut down a tree or a shrub, in a public park or remove it there from, except with the written permission of the Municipal Manager;
 - (b) unless permitted by a notice climb a tree growing in a public park or, break or damage such tree; or
 - (c) in any way mark or paint any tree in a public park or attach any advertisement thereto.
- (2) Any tree or shrub planted in a public park shall become the property of the Municipality.

11. Safety and order

- (1) No person shall, in a public park -
 - (a) damage, tamper with or destroy any equipment, amenity or structure.
 - (b) plant, pull out, pick, damage or remove any plant, grass, shrubs, bulbs, vegetation or flower.
 - (c) kill, hurt, follow, disturb, ill-treat, catch, remove, translocate or release any animal or displace, disturb, destroy or remove their habitat.
 - (d) use or try to use anything in such a park for any purpose other than that for which it is designated.
 - (e) discard any burning or smoldering object.
 - (f) throw or dislodge any rock, stone or object from any mountains, slope or cliff.
 - (g) behave in an improper, indecent, unruly, violent or anti-social manner or cause a disturbance.
 - (h) run, walk stand, sit or lie in a flower bed;
 - (i) run, walk, stand, sit or lie on grass contrary to a notice;
 - (j) lie on a bench or seating-place or use it in such a manner that prevent others from using it;
 - (k) play or sit on play park equipment, except if the person is permitted by a notice;
 - (l) swim, walk or play in a fish-pond, fountain, stream, dam or pond;
 - (m) skate on roller skates or a skateboard or similar device except where permitted by notice;
 - (n) operating a gas or charcoal fired barbeque or stove ;
 - (o) dig, disturb or remove any mineral substance including soil, sand, gravel or rock;
 - (p) damage, dig, disturb, deface, destroy or remove any fossils, bones or historical artifacts;
 - (q) operate any remote control device including boats, planes, helicopters or cars;
 - (r) build, erect, place, create, remove or modify any structure, amenity, pathway, trail, jump or ramp or
 - (s) engage in any activity which may pose a risk or in combination with other activities in the area of jurisdiction of the Ba-Phalaborwa Municipality.

- (2) Notwithstanding subsection (1) the Municipal Manager may, by notice, and subject to such conditions as he or she may deem necessary, authorize or permit any of the actions contemplated in subsections (1).

12. Water

No person may in a public park –

- (a) misuse, remove, pollute or contaminate any water source, water supply or waste water;
- (b) interfere or obstruct the flow of any river or seasonal wetland; or
- (c) drain or redirect any water from private land.

13. Vehicles

- (1) No person may bring into a public park any truck, bus, motorcar, motor cycle, bicycle, quadbike motor tricycle, or any other vehicle, craft, hot air balloon or aeroplane, whether driven by mechanical, animal, natural or human power, supermarket or other trolleys, except in accordance with the written permission of the Municipal Manager: Community and Social Services provided that different requirements or conditions may be determined for different public parks and for different vehicles, craft or aeroplanes.
- (2) The Municipal Manager may determine the speed limit applicable in a public park, provided that different speed limits may be determined for different public parks and for different vehicles, craft or aeroplanes.
- (3) The requirements or conditions contemplated in subsection (1) and the speed limit contemplated in subsection (2) shall be made known by a notice by the Municipal Manager.

14. Games

No person may play or conduct any game of any nature that will cause –

- (a) disturbance or potentially disturb; or
- (b) injury to, other parks users except at places set aside for that purpose by notice and in accordance with the directions of the Municipal Manager.

15. Improper or indecent behavior

No person may in a public park –

- (a) perform an act which is indecent or conduct himself or herself improperly by exposure of his or her person or otherwise, or make improper gestures or incite or urge someone to perform a disorderly or indecent act;
- (b) use fowl, lewd or indecent language;
- (c) write, paint, draw or in any way make a lewd, explicit or immoral figure, writing, drawing or representation; or
- (d) enter or use a toilet facility intended or indicated as such by notice for members of the opposite sex, provided that this shall not apply to children below the age of seven accompanied by an adult.

16. Powers of an authorized official

An authorized official may –

- (a) in a public park at any time enter upon any place, land, premises or building and conduct an investigation thereat in order to determine whether the provisions of this By-law are complied with;
- (b) for the better exercising of any power or the performance of any function or duty assigned or granted to him or her, take along an interpreter who, while acting under the lawful order of such an official, shall have the same powers, functions and duties as such official as contemplated in paragraph (a); (c) give instructions to or direct the public, for the purposes of this By-law, to act in a specific manner whilst at the public park.

17. Amendment, change and addition of a note or pictogram

- (1) The Municipal Manager may, subject to the provisions of this By-Law, amend, change or add any notice or pictogram.
- (2) The Municipal Manager must, within 5 working days after an amendment, change or addition of a notice or pictogram as contemplated in subsection (1), display such amended, changed or added notice or pictogram in the relevant public park or at the entrance thereto.

18. Offences and penalties

- (a) Any person who **contravenes or fails to comply with any provisions of these By-laws is guilty of an offence and is liable on conviction to a fine not exceeding R..... or in default of payment, to imprisonment not exceeding days/months/year.**
- (1) In addition to imposing a fine or imprisonment in terms of subsection (1), a court may order any person convicted of an offence under this By-law –
 - (a) to remedy the harm caused; or
 - (b) to pay damages for harm caused to another person or to property which order shall have the force and effect of a civil judgment.

19. Short title

This By-law is called the Ba-Phalaborwa Municipality: Public Parks By-law.

20. Pandemic compliance

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

ACTING MUNICIPAL MANAGER
JB SELAPYANE

DATE

COUNCIL RESOLUTION:

DATE: