

PUBLIC SPACE BYLAWS FOR NYANDENI MUNICIPALITY

CHAPTER I INTERPRETATION AND FUNDAMENTAL PRINCIPLES

1. DEFINITIONS

(1) In these By-laws, unless the context indicates otherwise-

“active game” means any physical sport, game or other activity by one or more persons which is undertaken within a public open space other than in an area set aside for that purpose, and which may cause injury to other users of the public open space, a nuisance or damage to vegetation or municipal property within a public open space and includes rugby, golf, archery, football, tennis badminton, hockey, netball, volleyball, skate-boarding, and roller-skating;

“authorized official” means any official of the Council who has been authorized by the Council to administer, implement, and enforce the provisions of these By-laws;

“conservation public open space” means public open space that is managed by or on behalf of the Council for conservation purposes, and includes nature reserves, greenbelts, ravines, bird sanctuaries and sites of historic, ecological or archaeological value;

“Council” means the Nyandeni Municipality and its successors in law, and includes the Council of that municipality or its Executive Committee or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any officer to whom the Council has delegated any powers and duties with regard to these bylaws;

“Criminal Procedure Act” means Criminal Procedure Act, 1977 (Act No. 51 of 1997);

“designated area” means an area designated by the Council as an area in which an active game or any other activity, which would otherwise be prohibited under Chapter III of these By-laws, may be undertaken;

“enforcement officer” means any peace officer, as defined in the Criminal Procedure Act who is duly appointed by the Council to enforce any provision of these By-laws;

“environment” means the surroundings which are inhabited by humans and that are made up of –

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the interrelationships among and between them; and
- (d) the physical, chemical aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

“environmentally sustainable” means the exercising of any decision-making powers or performance of any activities in a manner aimed at ensuring that –

- (a) the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;
- (b) the potential benefits to the environment and to human health and safety are maximized to the extent reasonably possible under the circumstances; and
- (c) legislation intended to protect the environment and human health and safety is complied with;

“local community” means that body of persons comprising-

- (a) the residents of the area in which the public open space is situate;
- (b) the rate payers of the area in which the public open space is situated; and
- (c) any civic organizations and non-governmental or private sector organization or bodies which are involved in local affairs in the area in which the public open space is situated;

“municipal manager” means a person appointed as such by the Council in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

“municipal property” means any structure or thing owned or managed by or on behalf of the Council and which is incidental to the use and enjoyment of a public open space and includes buildings, lapas, kiosks, benches, picnic tables, playground equipment, fountains, statues, monuments, fences poles, notices and signs;

“notice” means a clear and legible official notice drawn up by the Council in English and any other official language and prominently erected in a public open space;

“nuisance” means an unreasonable interference or likely interference with-

- (a) the health or well-being of any person;
- (b) the use and enjoyment by an owner or occupier of his or her property; or
- (c) the use and enjoyment by a member of the public of a public open space;

“organ of State” means –

- (a) any department of State or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution –
 - (i) exercising a power or performing a function in terms of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996) or a provincial Constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

“person” means a natural person or juristic person, and includes an organ of State;

“prescribed fee” means a fee determined by the Council by resolution in terms of section 10G(7)(a)(ii) of the Local Government Transition Act, 1993 (Act No.209 of 1993), or any other applicable legislation;

“printed matter” includes any advertisement, billboard, poster, book pamphlet or handbill;

“prohibited activity” means any activity or behavior that is prohibited in terms of Chapter III from being undertaken in a public open space, either completely or without permission in terms of section 22, 23 or 24;

“public open space” means any land which –

- (a) is owned by an organ of State, or
- (b) over which an organ of State has certain real rights arising from the filing in the Deeds Office or other registration office of a general plan of a township, agricultural holding or other division of land, or any alteration, addition to or amendment of such land approved by the Surveyor-General, on which is marked the land to which the public has a common right of use and
- (c) is controlled and managed by the Council; and
- (d) is either –

- (i) set aside in terms of any law, zoning scheme or spatial plan for the purposes of public recreation, conservation, the installation of public infrastructure or agriculture; or
- (ii) predominantly undeveloped and open and has not yet been set aside for a particular purpose in terms of any law, zoning scheme or spatial plan;

“recreational public open space” means public open space that is managed by or on behalf of the Council for the purposes of providing a public services, which includes road reserves and areas subject to electrical, pipeline and other public utility servitudes, but excludes council housing, clinics and other social services;

“road reserve” means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic which is between the edges of the roadway or that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway or shoulder;

“service provider” means a person or institution or any combination of persons and institutions which provide a municipal service in terms of the Local Government: Municipal Systems Act, 1998 (Act No. 32 of 2000);

“special event” means a parade, procession, race concert, show, exhibition, festival, ceremony, film shoot, photographic shoot or similar event, which requires, for that purpose, exclusive use of a part of a public open space;

“urban agricultural public open space” means public open space that is managed by or on behalf of the Council of r urban agricultural purposes;

“vehicle” means a device designed or adapted mainly to travel on wheels, but excludes wheelchairs and children’s pushchairs;

“waste” means any substance or article that the owner wishes to dispose of because it is unwanted, superfluous, broken, worn out, contaminated or otherwise spoilt and that has either been discarded or has been accumulated or stored so that it can be discarded, reused, reclaimed or recycled;

“watercraft” includes any boat, raft, yacht canoe, inflatable mattress, model ship or boat, radio-controlled boat or similar device;

“water body” means any body of water within a public open space and includes a pond, fountain, artificial watercourse, dam, lake, canal, reservoir, stream, river or wetland.

2. APPLICATION

- (1) These By-laws apply to all public open space that falls under the jurisdiction of the Council, but do not apply to cemeteries.

3. PURPOSE

The purpose of these By-laws is to provide, in conjunction with other applicable legislation, an effective legal and administrative framework:

- (a) to ensure that the way in which the Council controls, manages and develops public open spaces is environmentally sustainable, and is in the long-term interests of the whole community of Nyandeni, including future generations; and
- (b) that clearly defines the rights and obligations of the public in relation to public open spaces.

CHAPTER II
MANAGEMENT AND ADMINISTRATION OF PUBLIC OPEN SPACES

4. PRINCIPLES

- (1) Public open spaces must be managed, and where appropriate developed, in the interests of the whole community, and in determining the interests of the whole community-
 - (a) the long-term collective interests of the people of Nyandeni, and of South Africa, must be prioritized over the interests of any specific interest group or sector of society;
 - (b) a long term perspective, that takes account the interests of future generations, must be adopted; and
 - (c) the interests of other living organisms that depend on public open spaces must be taken into account.
- (2) Public open spaces must be managed in an environmentally sustainable manner.
- (3) Subject to subsection (5) and section 7, people must be given access to public open spaces on a non-discriminatory equitable basis.
- (4) Where necessary, special measures must be taken to facilitate access to public open spaces by historically disadvantaged persons and by disabled persons.
- (5) Access to a public open space may be restricted in a manner that does not unjustifiably discriminate against any person or class of persons -
 - (a) if the restriction is authorized by these By-laws or by any other applicable legislation; or
 - (b) in order to achieve the purposes of these By-laws.
- (6) The recreational, educational, social and other opportunities which public open spaces offer must be protected and enhanced to enable local communities, particularly historically disadvantaged communities, and the public to improve and enrich their quality of life.
- (7) Local communities must be encouraged to use and care for public open spaces in their areas.
- (8) The natural environment and heritage resources within public open spaces must be identified, preserved, protected and promoted, for the benefit of the local community, the public and future generations.

5. APPLICATION OF PRINCIPLES

The public open space management principles set out in section 4, and the national environmental management principles set out in section 2 of the National Environmental Management Act, 1998 (Act 107 of 1998), must be considered and applied by any person-

- (a) exercising a power or function or performing a duty under these By-laws;
- (b) formulating or implementing any policy that is likely to have a significant effect on, or which concerns the use of, public open spaces within the Council's jurisdiction; or
- (c) exercising a public power or function or performing a public duty that is likely to have a significant effect on, or which concerns the use of, public open spaces.

6. GENERAL POWERS

The Council may in relation to any public open space-

- (a) designates any area within a public open space as an area within which one or more activities otherwise prohibited in terms of these By-laws may be undertaken, and erect a prominent notice to this effect at entrances to the designated area;
- (b) develop any public open space in accordance with the principles set out in section 4;
- (c) erect, construct, establish or demolish municipal property; and
- (d) exercise any other power reasonably necessary for the discharge of the council's obligations in terms of these By-laws relating to the management of public open spaces.

7. FEES

The Council may require members of the public to pay –

- (a) a reasonable prescribed fee to use recreational or other facilities that the Council provides within public open spaces;
- (b) a reasonable prescribed fee for entrance to public open spaces which are significantly more expensive to maintain than other public open spaces, such as botanical garden;
- (c) a prescribed fee for the right to undertake a special event;
- (d) a prescribed fee for the right to exclusively use municipal property for a specific period;
- (e) a deposit prior to undertaking a prohibited activity;
- (f) an annual or monthly fee for the right to use urban agricultural public open space to the exclusion of any other person; and
- (g) a prescribed fee for processing applications for permits or letters of permission under these By-laws.

8. RESTRICTING ACCESS

The Council may restrict access to any public open space or to any part of a public open space for a specified period of time -

- (a) to protect any aspect of the environment within a public open space;
- (b) to reduce vandalism and the destruction of property;
- (c) to improve the administration of public open space;
- (d) to develop a public open space;
- (e) to enable a special event that has been permitted in terms of section 23 to proceed; or
- (f) to undertake any activity that the Council reasonably considers necessary or appropriate to achieve the purposes of these By-laws.

9. PROCEDURE WHEN EXERCISING POWERS

if the rights or legitimate expectations of any person will be materially and adversely affected by the Council exercising any power in terms of section 6, 7 or 8, before exercising the power the Council must -

- (a) give notice of the proposed administrative action, which notice must –
 - (i) be published in *Provincial Gazette* and in a newspaper circulating in the area or areas that will be directly affected by the proposed administrative action;
 - (iii) contain a clear statement of the proposed administrative action;

- (iv) invite comments and objections within a specified period; and
- (b) consider the comments and objections received in response to the notice

10. POWERS OF ENFORCEMENT OFFICERS

In relation to any public open space, an enforcement officer may-

- (a) issue a notice in terms of section 341 of the Criminal Procedure Act;
- (b) issue a notice under section 21;
- (c) order any person to leave a public open space if the enforcement officer reasonably believes that that person has not complied with any provision of these By-laws; and
- (d) exercise any other power that may be exercised by a peace officer under the Criminal Procedure Act.

11. OBLIGATIONS IN RELATION TO PUBLIC OPEN SPACES

- (1) The Council must within a public open space erect any notice required under these By-laws
- (2) In relation to recreational public open spaces, the Council must -
 - (a) ensure that they are open to the public between sunrise and sunset, unless specified otherwise in terms of a notice; and
 - (b) erect prominently displayed notices at every entrance indicating:
 - (i) the opening and closing times of that recreational public open space; and
 - (ii) any rules made in relation to that recreational public open space.

**CHAPTER III
PROHIBITED CONDUCT**

12. PROHIBITED ACTIVITIES

- (1) Any person who undertakes an activity or behaves in a manner that is prohibited under section 13 to 20 commits an offence unless the activity or conduct in question -
 - (a) took place in a designated area within which that activity was allowed;
 - (b) is authorized in terms of a permission granted or permit issued under sections 22, 23 or 24; or
 - (c) was deemed to have been authorized by the Council under subsection (2).
- (2) Subject to subsection (3), a person is deemed to have permission to undertake a prohibited activity if that person needs to undertake the prohibited activity –
 - (a) to perform his or her obligations as an employee, agent or subcontractor of the Council under his or her contract with, or mandate from, the Council or to achieve the purposes of this by-law;
 - (b) to carry out public duties as an employee, agent or subcontractor of an organ of State within a public open space is subject to a public utility servitude in favour of an organ of State;

- (c) to fulfil his or her duties as an authorized officer to implement these By-laws; or
 - (d) to fulfill his or her duties as a peace officer.
- (3) No person is deemed to have permission to undertake an activity that is prohibited under Section 13(1)(a), (e) or (f) or an activity that the Council has expressly refused to permit.

13. GENERAL

No person shall within a public open space -

- (a) act in a manner that is dangerous to life or property;
- (b) contravene the provisions of any notice within any public open space;
- (c) unlawfully enter a public open space to which access has been restricted in terms of section 8;
- (d) cause a nuisance;
- (e) behave in an indecent or offensive manner; or
- (f) obstruct any authorized official who is exercising a power under these By-laws.

14. USE

Subject to subsection (2) no person shall within a public open space-

- (a) bathe, wade, or swim in or wash him- or herself, an animal or any object including clothing, in any water body;
- (b) sail, row, paddle, propel or control any watercraft on any water body;
- (c) make, light or otherwise start a fire, unless in a designated area;
- (d) camp or reside in any public open space;
- (e) consume, brew, store or sell any alcoholic beverage;
- (f) use any sound equipment, including a radio, portable hi-fi or car stereo;
- (g) play an active game, except in an area designated for that purpose, on sport playing fields or on a golf course;
- (h) shoot a projectile of any nature; or
- (i) ride a horse or motorcycle.

15. WASTE

No person shall within a public open space -

- (a) deposit, dump or discard any waste, unless in a receptacle provided by the Council for that purpose; or
- (b) pollute or deposit any waste or thing in a manner which may detrimentally impact on a water body.

16. VEHICLES

No person shall within a public open space -

- (a) except at times and on roads or pathways prescribed by the Council, drive, draw or propel any vehicle;
- (b) drive, draw or propel a vehicle in excess of 10 kilometres per hour; or
- (c) park a vehicle in a public open space.

17. ANIMALS AND VEGETATION

- (1) Subject to subsection (2), no person shall within a public open space –
 - (a) disturb, damage, destroy or remove any vegetation;
 - (b) plant any vegetation;
 - (c) alter the slope or drainage pattern so as to interfere with the access of water, air or nutrients to any tree;
 - (d) capture or attempt to capture, chase, shoot at, injure, throw objects at, tease, molest or in any other way disturb any fish, bird or animal;
 - (e) disturb, damage or destroy any bird nest or eggs;
 - (f) walk, carry, ride or bring an animal, unless the animal is a guide dog and is accompanied by a person with a sight disability; or
 - (g) affix or place on any tree any printed matter.
- (2) The provisions of subsections (1)(a) and (b) do not apply to any person who has obtained a permit in terms of section 24 to undertake agricultural activities in an urban agricultural public open space.

18. MUNICIPAL PROPERTY AND ERECTION OF STRUCTURES

- (1) Subject to subsection (2), no person shall within a public open space -
 - (a) deface, damage, destroy or remove any municipal property;
 - (b) disturb the surface of any land, whether by digging or undertaking any earthworks;
 - (c) erect, build or assemble any structure, including a hut, tent, screen, bulletin board, pole, stand or stage;
 - (d) affix or place on any municipal property, or distribute, any printed matter, or
 - (e) plug, tamper with, or in any way damage any plumbing, electrical, heating or other fixtures or installations in any public open space.
- (2) The provisions of subsection (1)(b) do not apply to any person who has obtained a permit in terms of section 24 to undertake agricultural activities in an urban agricultural public open space.

19. SELLING AND SPECIAL EVENTS

- (1) No person shall within a public open space –
 - (a) use municipal property in a way that unfairly restricts or prevents other users of the public open space from enjoying that municipal property; or
 - (b) sell, hawk, offer or display any goods or articles for sale or hire;

- (2) No person may undertake a special event, except in terms of a permit issued in terms of section 23.

20. COMMUNITY SERVICE

No person shall within a public open space undertake any community or voluntary work of any description.

21. RESTORATION OR REMOVAL NOTICES

- (1) Unless permission or a permit to do so has been obtained under section 22, 23 or 24, an Enforcement Officer may issue a restoration or removal notice to any person who has directly or indirectly in a public open space –
- (a) damaged, defaced, disturbed, destroyed, demolished or removed vegetation or a municipal structure;
 - (b) erected, built or assembled a structure; or
 - (c) dumped, discarded or deposited any waste, unless in a receptacle provided by the Council for that purpose.
- (2) the restoration or removal notice may direct the person within the reasonable time stated in the notice to take stated reasonable action:
- (a) to restore or rehabilitate the affected area to the reasonable satisfaction of the Council; or
 - (b) to remove a structure or thing and restore the affected site, as nearly as practicable, to its former condition.

CHAPTER IV

APPLICATIONS FOR AUTHORISATION

22. APPLICATION FOR PERMISSION

- (1) Any person who wants to undertake a prohibited activity must apply in writing to the Council for permission to do so.
- (2) The Council may, after receiving an application, request the applicant to provide additional information which the Council reasonably requires in order to consider the application.
- (3) The Council may refuse to consider an application until it has been provided with the information that it reasonably requires to make an informed decision and until the prescribed fee (if any) has been paid.
- (4) Subject to subsections (2) and (3), the Council must consider the application within a reasonable time and must either:
- (a) refuse the application; or
 - (b) grant permission in writing subject to whatever conditions the Council considers appropriate to best achieve the purposes of these By-laws, which may include payment of ad deposit and/or a fee.
- (5) The Council must not grant permission of any person to behave in a manner that is prohibited under section 13(a), (e) or (f).

23. APPLICATION FOR PERMISSION

- (1) Any person who wants to undertake a prohibited activity must apply in writing to the Council for permission to do so.
- (2) The Council may, after receiving an application, request the applicant to provide additional information, which the Council reasonable requires in order to consider the application.
- (3) The council may refuse to consider an application until it has been provided with the information that it reasonably requires to make an informed decision and until the prescribed fee (if any) has been paid.
- (4) Subject to subsections (2) and (3), the council must consider the application within a reasonable time and must either:
 - (a) refuse the application; or
 - (b) grant permission in writing subject to whatever conditions the council considers appropriate to best achieve the purposes of these bylaws, which may include payment of a deposit and/or a fee.
- (5) The council must not grant permission for any reason to behave in a manner that is prohibited under section 13(1)(a), (e) or (f)

24. APPLICATION FOR A SPECIAL EVENT PERMIT

- (1) an application for permission to hold a special event in a public open space must be made at least three weeks before the proposed date of the special event.
- (2) The time period referred to in subsection (1) may be reduced on good cause at the Council's discretion.
- (3) The application must contain the following information -
 - (a) the name and full contact details of the applicant (including name, organization (ifany), address, telephone and fax numbers and email, if available);
 - (b) the nature and purpose of the special event;
 - (c) the intended route or area proposed to be used by the special event; and
 - (d) the permissions, if any, required under Chapter III of these By-laws.
- (4) Subject to any permit conditions imposed by the Council, the holder of a special events permit has the right to use the area of public open space specified on the permit to the exclusion of any other person during the period specified in the permit.

25. APPLICATION FOR PERMISSION TO FARM IN AN URBAN AGRICULTURAL PUBLIC OPEN SPACE

- (1) An application for permission to farm in an urban agricultural public open space must contain the following information –
 - (a) the name and full contact details of the applicant (including name, organization (ifany), address, telephone and fax numbers and email address, if available);
 - (b) the nature of the agricultural activity that the applicant proposes to undertake; and
 - (c) the size and location of the area on which the applicant wishes to undertake the proposed agricultural activity.
- (2) A permit under this section may require the permit holder to pay an annual or monthly fee for the use of the land.

- (3) The holder of an agricultural permit may, subject to any conditions in the permit, use the area of public open space specified in the permit for agricultural purposes to the exclusion of any other person.

CHAPTER V CO-OPERATIVE MANAGEMENT AGREEMENTS

- 26.** (1) The Council may enter into a written agreement with any organ of State, local community or organization to provide for –
- (a) the co-operative development of any public space; or
 - (b) the co-operative management of any public open space; and
 - (c) the regulation of human activities within a public open space.
- (2) The Council shall not enter into a co-management agreement in relation to a public open space unless it is reasonably believed that entering into the co-management agreement will promote the purpose of these By-laws.
- (3) The Council must monitor the effectiveness of the co-management agreement in achieving the purposes for which it was entered into and may cancel the agreement after giving reasonable notice to the other party if the Council has reason to believe that the co-management agreement is not effective, or is inhibiting the attainment of the purpose of these By-laws.

CHAPTER VI TREE PRESERVATION ORDERS

27. GENERAL

- (1) If the Council believes that any tree or group of trees in a public open space requires legal protection the Council may issue a tree preservation order in respect of that tree or group of trees.
- (2) A tree preservation order:
- (a) must indicate the tree or trees to which it relates; and
 - (b) may provide that any person who cuts, disturbs, damages, destroys, removes, transports, exports, purchases, sells, donates or in any other manner acquires or disposes of the tree to which it relates commits an offence.
- (3) The Council must erect a prominently displayed copy of any tree preservation order granted at or in the vicinity of the tree or trees to which the order relates.

28. PROCEDURE

Unless, in the Council's reasonable opinion, the issuing of a tree preservation order is required as a matter of urgency, the Council must, before issuing a tree preservation order under section 26-

- (a) give notice of the proposal to protect the tree or group of trees and invite comments and objections within a specified period, by publishing a notice in the Provincial Gazette and in two newspapers circulating in the area in which the tree or group of trees is situated;
- (b) notify any affected organs of State; and

- (c) consider the comments and objections received in response to the notice.

CHAPTER VII

APPEALS

- 29.**
- (1) A person whose rights are affected by a decision taken by any authorized official under these By-laws, 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 promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).
 - (3) The appeal authority 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.
 - (4) When the appeal is against a decision taken by-
 - (a) a staff member other than the municipal manager, the municipal manager is the appeal authority; or
 - (b) the municipal manager, the executive mayor is the appeal authority.
 - (5) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

CHAPTER VIII

GENERAL PROVISIONS

30. OFFENCES AND PENALTIES

- (1) Any person who-
 - (a) contravenes or fails to comply with any provisions of these By-laws;
 - (b) fails to comply with any notice issued in terms of these By-laws;
 - (c) fails to comply with any lawful instruction given in terms of these By-laws; or
 - (d) obstructs or hinders any authorized official in the execution of his or her duties under these By-laws is guilty of an offence and liable on conviction to a fine not exceeding R1000,00 or to imprisonment for a period not exceeding 6 months.

31. CONFLICT OF LAWS

If there is any conflict between these by-laws and any other by-laws of the council, these by-laws will prevail.