



GA-SEGONYANA LOCAL MUNICIPALITY

COMBATING VANDALISM OF MUNICIPAL PROPERTIES BY-LAWS

Preamble

Ga-Segonyana Local Municipality, by virtue of the powers vested in it by section 156(2) of the Constitution of the Republic, of South Africa as amended, read with section 13 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) as amended, in conjunction with read with Schedule 5 Part B of the Constitution of the Republic of South Africa has made the By-Law set out in the schedule below:

Purpose of By-law

- to administer the control and to protect Municipal Property and facilities from vandalism and nuisance thereof;
- To repeal all By-law which were previously applicable and related to control and combating of vandalism to municipal property.

INDEX

Chapter 1: Interpretation and fundamental principles

1. Definitions and interpretation

2. Application of by-laws
3. Purpose of by-laws

Chapter 2: Regulation

4. Principles of by-laws
5. Application of principles
6. General Powers of Council
7. Restricting Access
8. Powers of authorised officials
9. Issuing of notices
10. Services of notices

Chapter 3: Prohibited conduct

11. General Prohibition
12. Prohibited Activities
13. Prohibited conduct
14. Municipal property and erection of structures
15. Restoration or removal notices

Chapter 4: Applications for Authorisation

16. Application for permission
17. Application for a Special Permit

Chapter 5: Co-operative Management Agreements

18. Entering into Agreements
- 19.

Chapter 6: Miscellaneous

20. Offences and penalties

- 21. Penalties
- 22. Repeal
- 23. Short title

CHAPTER 1

INTERPRETATION AND FUNDAMENTAL PRINCIPLES

1. Definitions and interpretation

In these By-laws, unless the context otherwise indicates –

"authorised official" means any official of the Council who has been authorised by the Council to administer, implement, and enforce the provisions of these Bylaws;

"compliance notice" means a notice served in terms of section 9 of these by-laws;

"Council" means –

- (a) the Ga-Segonyana Local Municipality established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), as amended, exercising its legislative and executive authority through its municipal Council; or
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these by-laws 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 these by-laws, assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act (Act No. 32 of 2000) or any other law, as the case may be.

"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 maximised 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 a municipal property is situated;
- (b) the rate payers of the area in which a municipal property is situated; and
- (c) any civic organisation and non-governmental or private sector organisation or body which are

involved in local affairs in the area in which a municipal property 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 No 117 of 1998);

"notice" means a clear and legible official notice drawn up by the Council in English and prominently displayed 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; and

(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 of law and a judicial officer;

(iii)

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

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

"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 purpose 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;

"public utility public

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

"recreational public

open space" means public open space which is managed by or on behalf of the Council for public recreational purposes, and includes any park, sportsground and playground, but excludes any golf course;

"road reserve"

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

"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;

"vehicle"	means a device designed or adapted mainly to travel on wheels, but excludes a wheelchair and children's pushchair and perambulator;
"waste"	means any substance or article which a person wishes to dispose of because it is unwanted, superfluous, broken, worn out, contaminated or otherwise spoilt and that has 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 and wetland.(2)If any provision in these By-laws vests or imposes any power, function or duty of the Council in or on an employee of the Council and such power, function or duty has in terms of section 81(2) of the Local Government: Municipal systems Act, 2000, or any other law been assigned to a service provider, the reference in such provision to such employee must be read as a reference to the service provider or, where applicable, an employee of the service provider authorised by it.

2. Application of by-laws

This By-law shall apply on all premises situated on Municipal property and shall be valid in the area of jurisdiction of the Municipality in so far as it is applicable and not inconsistent with or excluded by the Constitution of South Africa

3. Purpose of by-laws

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

- (a) to protect municipal property from vandalism and that the Council powers in relations to the protection of Municipal Property from vandalism; and
- (b) which clearly defines the rights and obligations of the public in relation to Municipal Property.

CHAPTER 2

REGULATION

4. Principles of by-laws

- (1) Municipal property 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 Ga-Segonyane Local Municipality, and of South Africa, must be prioritised over the interests of any specific interest group or sector of society;
 - (b) a long-term perspective, which takes account the interests of future generations, must be adopted; and
 - (c) the interests of other living organisms which depend on Municipal property must be considered.
- (2) Municipal property, particularly recreational spaces must be managed in an environmentally sustainable manner.
- (3) Subject to the provisions of subsection (5) and section 7, people must be given access to public Municipal property on a non-discriminatory and equitable basis.

- (4) If necessary, special measures must be taken to facilitate access to Municipal property by historically disadvantaged persons and by disabled persons.
- (5) Access to a Municipal property may be restricted in a manner which does not unjustifiably discriminate against any person or class of persons–
 - (a) if the restriction is authorised by these By-laws or by any other law; or
 - (b) in order to achieve the purposes of these By-laws.
- (6) The recreational, educational, social and other opportunities which Municipal property 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 Municipal property 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 which is likely to have a significant effect on, or which concerns the use of, public open spaces within the Municipal jurisdiction; or

- (c) exercising a public power or function or performing a public duty which is likely to have a significant effect on, or which concerns the use of, public open spaces.

6. General Powers of Council

The Council may in relation to any property belonging to the municipality –

- (a) designate 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 display a prominent notice to this effect at every entrance to the designated area;
- (b) develop any Municipal property 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 municipal property.

7. Restricting Access

The Council may restrict access to any Municipal property or to any part of a municipal open space for a specified period of time –

- (a) to protect any aspect of the environment within the property;
- (b) to reduce vandalism and the destruction of property;
- (c) to improve the administration of a municipal property;
- (d) to develop a public open space;
- (e) to enable a special event which has been permitted in terms of section 17, to proceed; or

- (f) to undertake any activity which the Council reasonably considers necessary or appropriate to achieve the purposes of these By-laws.

8. Powers of authorised officials

In relation to any public open space, an authorized official may –

- (1) to the extent authorised by the Council administrator, implement and enforce the provisions of these By-laws;
- (2) issue a notice in terms of section 9;
- (3) instruct any person to leave a public open space if the authorized official reasonably believes that the person is contravening any provision of these Bylaws, and fails to immediately terminate such contravention upon the instruction of that official; and
- (4) if such official is a peace officer, exercise any power which may be exercised by a peace officer under the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

9. Issuing of notices

- (1) An authorised official may, where a person has contravened section 11, serve a notice on such person ordering him or her to repair or refrain vandalizing municipal property by a date specified in the notice which shall not be more than 30 days from the date of issuing the notice, and such notice must –
 - (a) specify the address or location of the property, natural surface or any other structure or thing to which the damage has been applied;
 - (b) describe in general terms the damage which has been applied; and
 - (c) state that if the damage in question is not applied in accordance with the notice, the Municipality or an outside agent appointed by the Municipality may effect such removal at the cost of the person to whom the notice is addressed.

- (2) Any costs incurred by the Municipality in terms of subsection (1) (c), as certified by the Director: Expenditure in the Directorate of Finance in the Municipality, shall constitute a liquid claim in favour of the Municipality and recoverable in terms of the Credit Control and Debt Collection Policy of the Municipality and the Credit Control and Debt Collection process of the Municipality.
- (3) Where the recovery of the costs referred to in subsection (2) will:-
- (a) impose on an owner of property a financial burden beyond the ability or financial capacity of such owner; or
 - (b) affect the same property repeatedly, the authorised official, subject to any law or any policy of the Municipality,
- may waive the whole or a part of the costs incurred.

10. Service of notices

- (1) Where a compliance notice is served on any person in terms of section 9 (1), it is deemed to have been properly served on such person when it has been served—
- (a) personally to him or her or in the case of a juristic person to a person apparently employed at its registered office;
 - (b) at his or her place of residence or business to a person apparently over the age of 16 years;
 - (c) by registered or certified mail to such person's last known residential or business address as appears in the records of the City or records at the Deeds Office, or in the case of a juristic person, to its registered office and an acknowledgment of posting is produced;
 - (d) on the agent or representative of such person in the Republic in one of the aforesaid manners, if an address in the Republic is unknown;

- (e) by posting it in a conspicuous place on the property to which it relates, for a period of 14 calendar days, if the address and agent are unknown.
- (2) The failure to make proper service on any person as required in terms of this By-law shall not invalidate any proceedings held in respect of contraventions of this By-law.

CHAPTER 3

PROHIBITED CONDUCT

11. General prohibition

- (1) No person shall within the area of jurisdiction of the municipality, without a permit issued by the Council, vandalise or cause vandalism to be applied to any —
 - (a) property;
 - (b) natural surface; or
 - (c) wall, fence, structure or thing in any street or other public place.
- (2) Any person who aids or assists the person referred to in subsection (1) in the application of vandalism as contemplated therein, in contravention of this By-law, shall be guilty of an offence.

12. Prohibited activities

- (1) Any person who undertakes an activity or behaves in a manner that is prohibited in terms of these By-laws, commits an offence unless, in addition to any exceptions contained in sections 12 (2), that activity or conduct—
 - (a) takes place in a designated area within which that activity or conduct is allowed; or
 - (b) is authorised in terms of a permission granted or permit issued in terms of section 17 to 18; or

- (c) is deemed to be authorised by the Council under subsection (2).
- (2) Subject to the provisions of subsection (3), a person is not in contravention of any provision of section 11 if that person needs to undertake the prohibited activity –
 - (a) to perform his or her obligations as an employee, agent or contractor of the Council under his or her contract with, or mandate from, the Council or to achieve the purposes of these By-laws;
 - (b) to carry out public duties as an employee, agent or contractor of an organ of State within a public open space which is subject to a public utility servitude in favour of that organ of State;
 - (c) to fulfil his or her duties as an authorised official; or
 - (d) to fulfil his or her duties as a peace officer.
- (3) Subsection (2) must not be interpreted to allow a contravention of section 7 (a) or (e) or any activity which the Council has expressly refused to permit.

13. Prohibited conduct

- (1) No person shall, in any Municipal properties: -
 - (a) remove, damage or injure any fountain, statue, monument, bust, post, chain, railing, fence, seat, notice-board or plate, house, building, shed, closet, flag, mark or other article or thing which is the property of the Municipality and no person shall disfigure or deface same by pasting thereon or affixing thereto in any way any bills, papers, placards or notices or by cutting, writing, stamping, painting, drawing or marking thereon or interfering therewith in any other manner whatsoever;
 - (b) saw, cut, gather, remove, dig up, fill in, burn, pick or break any timber, tree, shrub, brushwood, fencing pole, lawn, plant, fruit, flower or equipment or climb thereon or do any damage thereto;
 - (c) enter or attempt to enter into any enclosure, plantation, garden or temporary enclosure, which is the property of the Municipality, or walk over, stand or recline in any flower bed;

- (d) erect any shelter / house / shack with the intention to live or reside therein in a public amenity;
- (e) hawk or display for sale any goods whatsoever, without the prior written consent of the Municipality;
- (f) erect or cause to be erected, any post, rail, fence, tent, screen, stand, swing, structure, build or construction of whatever nature, without the prior written consent of the Municipality;
- (g) drive, park or place a vehicle upon or over any part of a flower bed or lawn, except in such spaces as are specially reserved for such purpose;
- (h) in rivers, ponds or fountains in a public amenity, wash any clothes or other articles or otherwise pollute the water therein or contaminate or waste any water source;
- (i) wash, polish, service or repair his / her vehicle in a public amenity;
- (j) in a river, bath or wash himself / herself or any other person or any animal, or allow any animal belonging to him / her or under his / her control to be therein;
- (k) cause unpleasant or offensive smells;
- (l) be allowed to dump, burn or allow to burn any wood, grass, garden refuse, packaging material or any flammable material;
- (m) be allowed to present any public entertainment or make use of a loud speaker, amplifier or any other audio equipment without the prior written permission of the Municipality.;
- (n) refuse to leave any park, natural area, garden or any other enclosed space, at or after the time of closing the gates, when requested to do so by any servant of the Municipality or member of the police force 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 of the authorized means of ingress or egress;
- (o) smoke in any place or building in which it is forbidden by notice affixed in a conspicuous place at or near the entrance to such place or building;
- (p) contravene or act contrary to any notice by the Municipality;
- (q) play or make preparation to play any game, except at the places and at the times indicated and set apart for such games by the Municipality;

(r) fire any firearm, discharge any firework, catapult or sling, throw any stone, stick or other object or 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;

(2) Any person who in any municipal property:

- (a) contravenes the provisions of these by-laws, or does not comply with any condition imposed in connection with the use of such public amenity;
or
- (b) acts in such a manner as to be a nuisance to other users of such public amenity and refuses to discontinue such action after being requested thereto by an authorized official;

may be instructed by such authorized official to leave or be served with a notice in terms of Section 9 of this by-law such public amenity.

(3) Any person who has in terms of subsection (2) been instructed to leave a public amenity either verbally or by notice and;

- (a) refuses to do so; or
- (b) returns within 24 hours to such a public amenity;

shall be guilty of an offence.

14. Municipal property and erection of structures

(1) Subject to the provisions of subsection (2), no person may within a public open space –

- (a) deface, damage, destroy or remove any municipal property;
- (b) disturb the surface of any land, whether by digging, undertaking any earthworks or otherwise;
- (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.
- (2) The provisions of subsection (1)(b) do not apply to any person who has obtained a permit in terms of section 17 to undertake agricultural activities in an urban agricultural public open space.
- (3) The provisions of this section are not applicable to the extent that the Public Road, Electronic Communications Networks and Miscellaneous By-laws, 2003 are applicable.

15. Restoration or removal notices

- (1) Unless permission or a permit to do so has been obtained in terms of section 16 to 17, an authorised official may issue a restoration or removal notice to any person who has 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, other than in a receptacle provided by the Council for that purpose.
- (2) The restoration or removal notice may direct the person concerned within a reasonable time specified in the notice to take stated reasonable steps specified in the notice –
- (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 4

APPLICATIONS FOR AUTHORISATION

16. Application for permission

- (1) Any person who wants to undertake a prohibited conduct must make application 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.
- (4) Subject to the provisions of 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 to the applicant subject to such conditions as the Council may consider appropriate to best achieve the purposes of these Bylaws.
- (5) The Council may not grant permission for any person to behave in a manner which is prohibited in terms of section 13 (a) or (d).

17. Application for a special permit

- (1) An application for permission to enter a restricted Municipal property must be made at least 21 days prior to the proposed date of access.
- (2) The time period referred to in subsection (1) may, on good cause shown, be reduced at the discretion of the Council.

- (3) An application in terms of subsection (1) must contain the following information:
- (a) The name and full contact details of the applicant, including name, postal address, telephone and fax numbers and email address, if available;
 - (b) the nature and purpose of the special event;
 - (c) the intended route or area proposed to be used for purposes of the special event; and
 - (d) any permission required under Chapter 3 of these By-laws.
- (4) Subject to any permit conditions imposed by the Council, the holder of a special permit has the right to use or access the area of Municipal property specified in the permit to the exclusion of any other person during the period specified in the permit.

CHAPTER 5

CO-OPERATIVE MANAGEMENT AGREEMENTS

18. Entering into agreements

- (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 municipal property or public open space; or
 - (b) the co-operative management of any municipal property or public open space; and
 - (c) the regulation of human activities within a public open space.
- (2) The Council may not enter into an agreement in terms of subsection (1) (b) unless it reasonably believes that entering into such an agreement will promote the purpose of these By-laws.

- (3) The Council must monitor the effectiveness of any agreement entered into in terms of subsection (1), 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 agreement is not effective, or is inhibiting the attainment of the purpose of these By-laws.

CHAPTER 6

MISCELLANEOUS

19. Offences and penalties

- (1) A person commits an offence if he or she—
- (a) contravenes any provision of this By-law;
 - (b) contravenes any conditions, restrictions or prohibitions imposed in terms of this by-law;
 - (c) fails to comply with the terms of any notice or signage displayed in terms of this by-law;
 - (d) obstructs, hinders, or in any manner interferes with an authorised official who is acting or entitled to act in terms of this by-law; or
 - (e) fails to obey any lawful instruction or direction given to him or her in terms of this By-law.
- (2) A person is guilty of a continuing offence if he or she continues with an offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence.

20. Penalties

- (1) Any person who is found to have contravened this by-law shall be liable to pay a fine in terms of the fine schedule of the Municipality and/or compensate the municipality for its loss;
- (2) Any person who is convicted of an offence under this By-law is liable to a fine of an amount not exceeding R40 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and imprisonment.
- (3) In the case of a continuing offence, an additional fine of an amount not exceeding R200 or imprisonment for a period not exceeding 10 days, for each day on which such offence continues or both such fine and imprisonment, will be imposed.

20. Repeal

Any By-Laws which were previously applicable and related to by-laws on combating vandalism on Municipal Property are hereby repealed.

21. Short title

These By-laws are called the Combating Vandalism of Municipal Properties By-law, 2020.