

SUMMARY OF PERTINENT PROVISIONS OF THE DRAFT PUBLIC OPEN SPACES BY-LAWS

CHAPTER I: INTERPRETATION AND FUNDAMENTAL PRINCIPLES

- (2) The definitions have been drafted to take into account the Constitution and legislation relating to local government and the environment.**

Purpose

1. The purpose of the 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 Johannesburg, 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

Principles

The following principles are applicable:-

2.
 - (1) Public open spaces must be managed, and where appropriate developed, in the interests of the whole community.
 - (2) Public open spaces must be managed in an environmentally sustainable manner.
 - (3) People must be given access to public open spaces on a non-discriminatory and 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.
 - (a) (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.
 - (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.

Application of principles

3. The National Environmental Management Act, 1998 (Act 107 of 1998), must be considered and applied by any person exercising a power or function or performing a duty under these By-laws.

General powers

4. The Council may in relation to any public open space –
 - (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;
 - (b) develop any public open space in accordance with the principles set out in section 2;

Fees

5. 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 gardens;
 - (c) a prescribed fee for the right to undertake a special event;

Restricting access

6. 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 a public open space;
 - (d) to develop a public open space;
 - (e) to enable a special event to proceed; or
 - (f) to undertake any activity that the Council reasonably considers necessary or appropriate to achieve the purposes of these By-laws.

Procedure when exercising powers

7. Before exercising its power the Council must
 - (a) (a) give notice of the proposed action; and
 - (b) consider the comments and objections received in response to the notice.

Powers of enforcement officers

8. In relation to any public open space, an enforcement officer may issue a notice in terms of the Criminal Procedure Act or the By-laws, or order a person to leave a public open space.

Obligations in relation to public open spaces

9. (1) The Council must within a public open space erect any notice required under these By-laws.
 - (i) (2) In relation to recreational public open spaces, the Council must ensure that they are open to the public between sunrise and sunset, unless specified otherwise.

CHAPTER III: PROHIBITED CONDUCT

Prohibited activities

Any person who undertakes an activity or behaves in a manner that is prohibited under this chapter commits an offence.

General

10. 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;
 - (d) cause a nuisance;
 - (e) behave in an indecent or offensive manner; or obstruct any authorised official who is exercising a power under these By-laws.

Use

11. Unless authorized, no person shall within a public open space –
- (a) swim in or wash him- or herself, an animal or any object, including clothing, in any water body;
 - (b) use a watercraft on any water body;
 - (c) make a fire;
 - (d) camp in any public open space;
 - (e) consume, brew, store or sell any alcoholic beverage;
 - (f) use any sound equipment;
 - (a) play an active game, except in an area designated for that purpose;
 - (b) shoot; or
 - (g) ride a horse or bicycle.

Waste

12. No person shall within a public open space deposit, dump or discard any waste, unless in a receptacle provided by the Council for that purpose.

Vehicles

- (a) 13. Limitations are placed on the driving and parking of vehicles within a public open space.

Animals and vegetation

14. No person shall within a public open space disturb, damage, destroy or remove any vegetation; plant any vegetation; molest or in any other way disturb any fish, bird or animal; or place on any tree any printed matter.

Selling and special events

13. 15. Unless so authorized no person shall within a public open space use municipal property in a way that unfairly restricts or prevents other users of the public open space from enjoying that municipal property or sell, hawk, offer or display any goods or articles for sale or hire.

Community service

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

CHAPTER IV: APPLICATIONS FOR AUTHORISATION*Application for a special event permit*

17. (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 specified information.

Application for permission to farm in an urban agricultural public open space

An application for permission to farm in an urban agricultural public open space must contain specified information.

CHAPTER V: CO-OPERATIVE MANAGEMENT AGREEMENTS

19. 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
- the regulation of human activities within a public open space.

CHAPTER VI: TREE PRESERVATION ORDERS*General*

- (a) 20. 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.

CHAPTER VII: APPEALS

21. A person whose rights are affected by a decision taken by any authorised 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.

CHAPTER VIII: GENERAL PROVISIONS

Offences and penalties

22. 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 authorised 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 or in default of payment to imprisonment for a period not exceeding 6 months.