

NYANDENI LOCAL MUNICIPALITY

PHYSICAL ADDRESS:

Municipality Building
B.N. Nomandela Drive
LIBODE

POSTAL ADDRESS:

Private Bag X 504
LIBODE
5160



el: 047 5555 023

047 5555 000

047 5550 278

Email: zozin@nyandenilm.gov.za

"Deciding with the people, not for the people"

NYANDENI LOCAL MUNICIPALITY MUNICIPAL PARKS AND RECREATIONAL BY-LAW 2018



Adopted by Council on the:

Promulgated on:

To provide for the control, preservation and maintenance of the municipal parks and recreational grounds as well as the use and enjoyment thereof by members of the public.

PREAMBLE

WHEREAS Nyandeni Local Municipality has legislative and executive competence relating to local amenities and municipal parks and recreation within its area of jurisdiction;

WHEREAS the municipal parks and recreational grounds are available for use and enjoyment by members of the public;

AND WHEREAS the Municipality wishes to adopt such measures as may be necessary to protect and preserve the natural vegetation and equipment on the municipal parks and recreational grounds and to control the use and enjoyment thereof by members of the public;

NOW THEREFORE the Municipal Council of Nyandeni Local Municipality, acting in terms of section 156 read with Schedule 5 Part B of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)

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CHAPTER 1

INTERPRETATION

Definitions

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

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

“**authorized official**” means a person authorized to implement the provisions of this By-law, including but not limited to –

(a) “**peace officers**” as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) “**municipal police officers**” as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and

(c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorized by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

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

“**Council**” or “**Municipal Council**” means the Nyandeni Local Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

“**Municipal Manager**” means the official of the Municipality appointed as contemplated in section 54A of the Systems Act;

“**notice**” means a written notification issued or pictogram displayed in terms of this By-law which is prominently and legibly displayed in any part of a park;

“**park**” means any park, recreational ground, open space, square, reserve, botanic or other garden which is under the control or ownership of the Municipality, and includes all buildings, facilities, equipment, trees and natural vegetation within such park;

“**Policy**” means the tariff policy adopted by the Council in terms of section 74 of the Systems Act;

“**prescribed fee**” means a fee determined by the Council by resolution in accordance with the Policy;

“**reservation**” means a written application to the Municipality for the use of a park or any part thereof for the purpose of a private event or function, and “**reserve**” has a corresponding meaning;

“**Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“**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 and which is designed or adapted to be propelled by means of such pedals, engine or motor, or both such pedals and engine or motor.

Interpretation of By-law

2. In the event that there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

Objects of By-law

3. The objects of this By-law are to –
 - (a) protect and preserve parks for the benefit of the public;
 - (b) regulate proper use and enjoyment of parks by members of the public;
 - (c) standardize the fees prescribed for the reservation of parks for private events and functions; and
 - (d) provide for matters incidental thereto.

Application of By-law

4. This By-law applies to –
 - (a) all parks under the ownership or control of the Nyandeni Local Municipality; and
 - (b) any park which is lawfully controlled and managed by a person other than the Municipality in terms of an agreement concluded between such person and the Municipality.

CHAPTER 2

PUBLIC ACCESS

Terms and conditions

5. (1) The Municipality reserves the right to determine the terms and conditions for access into a park.
(2) A person who is allowed access into a park must –
 - (a) observe and comply with all the notices displayed at any area of the park, including the entrance thereto; and
 - (b) obey any lawful instruction given to him or her by an authorized official.

Entrance into a park

6. A person may only enter a park through the gates provided for that purpose as indicated on a notice displayed at or near the entrance to the park.

Maximum number of persons

7. The Municipality reserves the right to determine the maximum number of persons who may be present in a park at any one time: Provided that an authorized official may vary the maximum number of persons allowed in a park where permission is granted for a park to be used for either a different purpose or a private event or function as contemplated in section 11.

Entrance fees

8. (1) The Municipality may prescribe an entrance fee which is payable upon entry into the park.
(2) Any person in a park who is required to pay an entrance fee must, upon request by an authorized official, produce proof of payment of such fee.

(3) The Municipality may, subject to subsection (1), suspend the payment of an entrance fee in respect of any park on any specific day or days and for such period as it may deem appropriate.

Closure or restriction of access

9. (1) The Municipality may close or restrict public access to any park or part thereof for any purpose not inconsistent with the provisions of this By-law, including maintenance, safety and restoration or protection of trees and natural vegetation.

(2) In the event of closure of or restriction of access to a park in accordance with subsection (1), a notice must be posted at or near the entrance to the park concerned indicating the actual period of such closure or restriction of access.

Exclusion or removal from a park

10. (1) an authorized official may exclude or remove from a park any person who –

- (a) is in a state of intoxication or under the influence of narcotics;
- (b) behaves in a manner which is disorderly, unseemly or disruptive to other persons visiting the park; or
- (c) commits, or is reasonably suspected by an authorized official to have committed, an offence or any other act which is in contravention of any provision of this By-law.

(2) Failure or refusal by a person referred to in subsection (1) to leave a park upon being ordered by the authorized official to do so is an offence in terms of this By-law.

CHAPTER 3

PRIVATE EVENTS AND FUNCTIONS

Reservation of park for private event or function

11. Any person who wishes to apply for the reservation of a park or part thereof for a private event or function must –

- (a) submit an application to the authorized official on the form prescribed by the Municipality for that purpose; and
- (b) make payment to the Municipality or its authorized agent of a prescribed fee for the private use of the park before the date applied for, unless payment of the prescribed fee is exempted by the Municipality in writing.

Municipality's right of refusal or cancellation

12. (1) The Municipality may –

- (a) refuse to grant an application for the private event or function; or
- (b) cancel any approval if such application is already approved,
- (c) if an authorized official suspects on reasonable grounds that the event or function applied for is either unlawful or is likely to result in public disturbance.

(2) In the event of the approved private use of a park being cancelled by the Municipality in accordance with subsection (1) or for any other reason not attributable to the applicant, the applicant concerned is entitled to a refund of the prescribed fee paid to the Municipality in accordance with section 11(b).

Terms and conditions of private use of park

13. (1) Where an application for the private use of a park or part thereof is granted by the Municipality in terms of section 11, such park or part thereof may only be used –
- (a) for the purpose indicated on the application form; and
 - (b) subject to the terms and conditions stipulated by the Municipality in an agreement designed for that purpose, unless prior approval by the authorized official is obtained in writing authorizing it to be used for a different purpose.
- (2) A person who applies for the private use of a park must, subsequent to the approval of such application by the Municipality, sign an agreement obtainable from the municipal department responsible for the park in question setting out the terms and conditions of the private use thereof.

Public announcement and advertising

14. (1) A person who has applied for the use of a park for a private event or function may not publicly announce or advertise the use of such park for the event or function concerned before the Municipality has notified that person in writing that the application has been approved.
- (2) An approval of an application for the use of a park for a private event or function does not absolve the applicant from due compliance with the Municipality's Advertising By-law in respect of the private event or function concerned.
- (3) An applicant referred to in subsection (1) must, before vacating the park at the end of the private event or function concerned, remove every poster, notice, decoration, flag, emblem, sign and other form of advertisement or direction erected or affixed by or at the instance of such person and make good any damage caused by such removal.

CHAPTER 4

GENERAL PROVISIONS

Food and alcoholic beverages

15. (1) Subject to the provisions of subsection (2), the preparation and cooking of food in a park is restricted to the place or places set aside by notice for such purpose and must be done under clean and hygienic conditions.
- (2) The slaughtering or skinning of an animal for any purpose whatsoever is not allowed in a park.
- (3) Unless authorized by the Municipality in writing to do so, a person may not –
- (a) sell or display for sale any items, goods or services; or
 - (b) bring into, consume or sell any alcoholic beverage or other intoxicating substance, in a park.

Starting of a fire

16. (1) A person may only start a fire in a park in a place as may be designated by the Municipality for that purpose.
- (2) Where a person has started a fire in a place designated for that purpose as contemplated in subsection (1), such person may not leave the fire unattended or depart from the place where the fire is burning or smoldering without first ensuring that such fire is completely extinguished.

Vehicles

17. (1) Unless specifically authorized by the Municipality through the use of relevant signage displayed at the entrance to a park, access of vehicles of any kind is prohibited in a park.
- (2) Where vehicular access is allowed in a park, an authorized official is empowered to control and regulate the use thereof within the park concerned, including the –
- (a) demarcation of parking bays and the levying of tariffs for the use thereof.

Facilities reserved for children

18. (1) Where a facility or equipment in a park is reserved for children, the use of such facility or equipment must be restricted to persons not older than 13 years of age.
- (2) An authorized official may require any person to produce documentary proof of age of any person intending to use a facility or equipment referred to in subsection (1), failing which such person may be refused access to the facility or equipment concerned.

Animals

19. (1) Except for a guide dog which is being used by a blind person, the Municipality reserves the right to prohibit or restrict the access of any animal into a park through a notice to that effect displayed at or near the entrance to such park.
- (2) Where animal access into a park is not prohibited in terms of subsection (1), any person who brings an animal into a park must keep it under proper control and ensure that any excrement by such animal is immediately removed and disposed of in a waste bin or other receptacle provided by the Municipality for that purpose.

Prohibited conduct

20. (1) A person entering or visiting a park must at all times act in strict compliance with the provisions of this By-law, as well as such lawful instructions and orders as may be issued or given by an authorized official.
- (2) Subject to the provisions of subsection (1), a person entering or visiting a park may not –
- (a) conduct himself or herself in a manner which is inappropriate, improper or indecent;
- (b) cause a nuisance, annoyance or disturbance to any other person visiting the park;
- (c) destroy or remove any tree, flower or plant growing in any part of the park;
- (d) deposit or throw any rubbish, paper or other waste matter or thing anywhere other than in a receptacle provided by the Municipality for such purpose;
- (e) drive, ride or park any vehicle or cause or permit any vehicle to be within the area of any park, except insofar as is permitted by a notice displayed in the park;
- (f) damage, tamper with or destroy any equipment, amenity or structure;
- (g) lie on a bench or seating place or use it in such a manner that it prevents others from using it;

(h) build, erect, place, create, remove or modify any structure, amenity, pathway, trail, jump orramp;

(i) play or conduct any game of any nature that will cause –

(i) disturbance or potentially disturb; or

(ii) injury to, other park users, except at places set aside for such purpose by a notice displayed in thepark and in accordance with the direction of an authorized official, if any;

(j) sell, offer or display for sale or hire any commodity or article or distribute any pamphlet,book, handbill, or other printed or written matter without prior written consent of theMunicipality;

(k) carry, possess or discharge within a park a –

(i) firearm or air gun unless it is in accordance with any applicable law; or

(ii) slingshot, bow and arrow, dart device, or other device designed for high-speed missile projection, except where permitted by the Municipality to do so;

(l) engage in any other conduct in contravention of this By-law, the Municipality's Nuisance and Health By-laws or any other applicable law; and

(m) sleep over or camp in the park.

CHAPTER 5

ENFORCEMENT

Offences and penalties

21. (1) A person who –

(a) contravenes, refuses or fails to comply with any provision of this By-law;

(b) refuses or fails to comply with any –

(i) notice issued; or

(ii) lawful instruction given, in accordance with this By-law; or

(c) obstructs or hinders any authorized official of the Municipality in the execution of his orher duties under this By-law, is guilty of an offence.

(2) A person who is convicted of an offence under this section may be sentenced to a maximumfine of R5 000 or to imprisonment for a period not exceeding one year or to both such fine and aperiod of imprisonment.

(3) In the case of a continuing offence an additional fine of an amount not exceeding R300-00 orimprisonment for a period not exceeding one month, for each day on which such offence continues orboth such fine and imprisonment, will be imposed.

CHAPTER 6

MISCELLANEOUS

Delegations

22. (1) Subject to the Constitution and applicable national and provincial laws, any –

- (a) power, excluding a power referred to in section 160(2) of the Constitution;
- (b) function; or
- (c) duty,

conferred, in terms of this By-law, upon the Council, or on any of the Municipality's other political structures, political office bearers, councilors or staff members, may be delegated or sub delegated by such political structure, political office bearer, councilor or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) A delegation in accordance with subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the Systems Act, subject to the criteria set out in section 50(2) of the said Act.

(3) Any delegation contemplated in this section must be recorded and must contain information on the-

- (a) entity or person issuing the delegation or sub-delegation;
- (b) recipient of the delegation or sub-delegation; and
- (c) conditions attached to the delegation or sub-delegation.

Appeals

23. (1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against the decision in terms of the Appeals provision contained in the Systems Act 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.

(3) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.

(5) The appeal authority must furnish written reasons for its decision on all appeal matters.

(6) All appeals lodged are done so in terms of the Systems Act and not in terms of this By-law.

(7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

Short title and commencement

24. This By-law is called the Municipal Parks and Recreational By-law, 2015, and takes effect on the date of the publication thereof.