**MAFUBE LOCAL MUNICIPALITY**



**DRAFT PARKS AND OPEN SPACES MANAGEMENTBY-LAW**

**01 JULY 2018**

The Municipal Council hereby, in terms of Section 13 of the Local Government: Municipal Systems Act 32 of 2000 and Section 84(1)(p) of Local Government : Municipal Structures Act, 117 of 1998 publishes By-Law set forth hereinafter, which have been approved by the Council in terms of Sections 11 and 12 of the said Act.

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| CHAPTER 1INTERPRETATION AND FUNDAMENTAL PRINCIPLES |

**1.1 Definitions**

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

**“adult”** means any person of the age of 18 (eighteen) years or older;

**“agricultural land”** will mean land forming part of open spaces defined herein and utilized for agricultural purposes whether by the Municipality or other lawful occupiers thereof;

**“animal”** means any vertebrate;

**“conservation areas”** will mean tracts of land demarcated by the Municipality for conservation purposes;

**“directorate”** will mean the directorate of the Municipality which is in control of open spaces;

**“fee”** will mean a fee determined by the Municipality in terms of its Tariff By-Law in respect of any matter dealt with in this By-Law;

**“garden”** will mean any area of open spaces as herein defined demarcated by the Municipality as a garden;

**“group”** means for purposes of Chapter 2 of these By-Laws a body of persons whether incorporated or unincorporated;

**“Municipality”** will mean the Municipal Council of the Mafube Local Municipality, which is a municipal council as defined in the Local Government Municipal Systems Act 32 of 2000 and Local Government: Municipal Structures Act 117 of 1998.

**“notice”** will mean a clear visible notice in one or more official languages exhibited by or under the authority of the directorate;

**“official”** will mean any authorized official in the employment of the municipality who has been delegated with the powers to act upon any provision of this By-Law;

**“park area”** will mean any area of public [or private] open space as herein defined which have been demarcated as such whether or not they are developed or undeveloped;

**“Problematic Animal”** includes any mammal, reptile, insect, bird or fish that has been introduced to any open space, dam, or river and is subsequently threatening the well-being of the environment and/or causes any disturbance whether noise or odorous, health hazard or danger to any person adjacent to or visiting the open space

**“Problematic tree”** includes all trees declared as invaders under the Conservation of Agricultural Resources Act 43 of 1983 and other trees that have been declared by the Municipality as problematic due to specific characteristics that makes it unsuitable

“**active game”** means any physical sport, game or other activity participated in 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, roller-skating and in-line skating;

**“council”** means Mafube Municipal Council and includes the Mayor, Political Office Bearers, Political Structures, Municipal Manager and any other official who has delegated powers in terms of section 59 of the Local Government: Municipal Systems Act (Act 32 of 2000);

**“designated area”** means an area designated by the Council as an area in which an active game or any other activity or conduct, which would otherwise be prohibited under Chapter 4 of these By-laws, may be undertaken;

**“environment”** means the surroundings within which humans exist and that are made up of –

1. the land, water and atmosphere of the earth
2. micro-organisms, plant and animal life;
3. any part or combination of paragraphs (a) and (b) and the interrelationships among and between them; and
4. 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 –

1. the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;
2. the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances; and
3. legislation intended to protect the environment and human health and safety is complied with;

**“local community”** means that body of persons comprising –

1. the residents of the area in which a public open space is situated;
2. the ratepayers of the area in which a public open space is situated; and
3. any civic organisation and non-governmental or private sector organisation
4. or body which are involved in local affairs in the area in which a public open space is situated;

**“municipal manager”** means a person appointed as such by the Council in terms of section 54A of the Local Government: Municipal Systems Act, 1998 (Act No 32 of 2000);

**“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 any building, lapa, kiosk, bench, picnic table, playground equipment, fountain, statue, monument, fence, pole, notice and sign;

**“Nuisance”** means an unreasonable interference or likely interference with–

1. the health or well-being of any person;
2. the use and enjoyment by an owner or occupier of his or her property; or
3. the use and enjoyment by a member of the public of a public open space;

**“organ of state”** means –

1. any department of State or administration in the national, provincial or local sphere of government; and
2. any other functionary or institution –
3. 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
4. or performing a public function in terms of any legislation, but does not include a court of law and a judicial officer;

**“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;

**“prohibited activity”** means any activity or behaviour which is prohibited in terms of Chapter 3 from being undertaken in a public open space, either completely or without permission in terms of section 21, 22 or 23;

**“public open space”** means any land which –

1. is owned by an organ of State, or
2. 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
3. controlled and managed by the Council; and
4. is either –
5. 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
6. 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, botanical garden, 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;

**“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.

**“open spaces”** will include, without derogating from the generality of the term:

(a) developed park areas;

(b) undeveloped park areas, duly zoned as such;

(c) agricultural land whether owned by the Municipality or the State;

(d) tracts of land whether owned by the Municipality or the State;

(e) sidewalks and road islands;

(f) public parking areas;

(g) a dam and its environs;

(h) any other tract of land with no determined use.

(i) private open spaces

“vehicle” will mean any self-propelled vehicle and includes

(a) a trailer;

(b) a vehicle having pedals and an engine or an electric motor as an integral part thereof or attached thereto and which is designed and 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 electrical power derived from storage batteries and which is pedestrian controlled; or

(ii) any vehicle of a mass of not more than 230 kg 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;

(c) a cycle which includes any two, three of four wheeled motorbikes.

The male gender will include the female gender and vice versa and singular will include the plural and vice versa.

1.1.1 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.

**1.2 Application of By-Laws**

1.2.1 These By-laws apply to every public open space, which falls under the jurisdiction of the Municipality, but do not apply to cemeteries.

1.2.2 These By-laws are binding on the State.

**1.3 Purpose of By-laws**

1.3.1 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 Municipality controls, manages and develops public open spaces is environmentally sustainable, and is in the long-term interests of the whole community of Mafube, including future generations; and

(b) which clearly defines the rights and obligations of the public in relation to public open spaces.

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| CHAPTER 2MANAGEMENT AND ADMINISTRATION OF PUBLIC OPEN SPACES |

**2.1 Principles of By-laws**

2.1.1 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 Mafube, 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 public open spaces must be taken into account.

2.1.2 Public open spaces must be managed in an environmentally sustainable manner.

2.1.3 Subject to the provisions of subsection 5.8, people must be given access to public open spaces on a non-discriminatory and equitable basis.

2.1.4 If necessary, special measures must be taken to facilitate access to public open spaces by historically disadvantaged persons and by disabled persons.

2.1.5 Access to a public open space may be restricted in a manner, which does not unjustifiably discriminate against any person or class of persons– if the restriction is,

(a) authorised by these By-laws or by any other law; or

(b) in order to achieve the purposes of these By-laws.

2.1.6 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.

2.1.7 Local communities must be encouraged to use and care for public open spaces in their areas.

2.1.8 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.

**2.2 Application of principles**

2.2.1 The public open space management principles set out in section 2.1, 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 Municipality’s 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.

**2.3 General Powers of Municipality**

2.3.1 The Municipality 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, and display a prominent notice to this effect at every entrance 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 Municipality’s obligations in terms of these By-laws relating to the management of public open spaces.

**2.4 Fees**

2.4.1 Any member of the public must pay –

a) a prescribed fee to use recreational or other facilities which the Municipality provides within any public open space;

b) a prescribed fee for entrance to any public open space which is 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;

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 permitted by the Municipality;

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, if such a fee or deposit has been determined by the Municipality.

**2.5 Restricting Access**

2.5.1 The Municipality 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 or to undertake any activity which the Municipality reasonably considers necessary or appropriate to achieve the purposes of these By-law.

**2.6 Powers of Authorised Officials**

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

a) to the extent authorised by the Municipality administer, implement and enforce the provisions of these By-law;

b) issue a notice in terms of any provision of these By-Law;

c) instruct any person to leave a public open space if the authorized official reasonably believes that the person is contravening any provision of these By-law, and fails to immediately terminate such contravention upon the instruction of that official; and

d) 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).

**2.7 Obligations in relation to Public Open Spaces**

2.7.1 The Municipality must within a public open space display any notice required under this By-law.

2.7.2 In relation to recreational public open spaces, the Municipality must –

a) ensure that they are open to the public between sunrise and sunset, unless specified otherwise in terms of a notice; and

b) prominently display a notice at every entrance indicating:

(i) the opening and closing times of that recreational public open space; and

(ii) any rules made by the Municipality in relation to that recreational public open space.

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| CHAPTER 3MANAGEMENT OF TREES |

**3.1 Obligations of the Municipality**

3.1.1 Protection and preservation of park and street trees;

3.1.2 Protecting and preserving indigenous vegetation by maintaining its natural state and promoting its sustainability;

3.1.3 Promoting the planting of suitable (especially indigenous trees) on public and private property;

3.1.4 Informing and educating the community about the value of trees and discourage vandalism of trees;

3.1.5 Ensuring that Mafube will develop into a green city, with a wealth of trees and natural vegetation;

3.1.6 Identifying, removing and controlling problematic plants;

3.1.7 Protecting water catchment areas from invader trees;

3.1.8 Replacing all trees that are removed with suitable alternatives.

**3.2 Non Removal of Trees**

3.2.1 the person requiring its removal has addressed a written application to the Director of Community Services, identifying the tree to be removed and stating the reason for the request; and

3.2.2 an official appointed by the Municipality to be responsible for the removal of trees has investigated the application; and

3.2.3 the applicant has been advised in writing of the Municipality’s decision; and

3.2.4 the applicant has paid the fee for the removal of the tree where applicable.

**3.3 Requirements**

3.3.1 The requirement of 3.2 will also apply to the various departments of the Municipality and individual members of the Council and other state departments.

**3.4 Location of Trees**

3.4.1 A tree located on a public open space or sidewalk will be removed free of charge by the Municipality, acting through its directorate, if:

3.4.1 The tree is dead or in the process of dying due to natural causes and for this reason proves to be dangerous to its surroundings

3.4.2 If the tree was hit by lightning and proves to be dangerous to its surroundings

3.4.3 If the tree has any structural defects in the main stem due to fire, bacteria or fungal disease or due to any accident and for this reason proves to be dangerous to its surroundings

3.4.4 If the tree is declared as a problematic tree

3.4.5 If the tree is hazardous to traffic and which cannot be corrected by pruning

3.4.6 If the Municipality has decided via Council resolution that any tree is to be removed

3.4.7 If the tree is obstructing municipal development such as roads, storm water or power lines, provided that all cost effective and practical alternatives have been evaluated which could preserve the tree

3.4.8 If the tree is causing extensive damage to roads, buildings, dams or walls and if the damage is more than the tree’s replacement and removal costs

3.4.9 If the tree is threatening to fall over

**3.5 Fee Charged for Removal**

3.5.1 If the tree needs to be removed because of a proposed entrance to a property, new or additional parking, changes to the tree’s environment, pedestrian walkway or any sort of building or development in the position of the existing tree.

3.5.2 If the tree needs to be removed because of underground developments such as power lines, sewer lines, water lines or communication lines;

3.5.3 If the tree needs to be removed because of damage caused by:

3.5.3.1 negligent or intentional poisoning of a tree in addition to a fine not exceeding**R 300-00 per tree** and the value of the tree based on the standard tree valuation method used by the Municipality, if proven guilty.

3.5.3.2 vehicle collision;

3.5.3.3 vehicles and/or equipment moving or working in the vicinity of the tree.

3.5.2 A tree will only be removed after the fee for its removal, where applicable, has been paid to the Municipality.

**3.6 Landmark Tree preservation**

3.6.1 The Municipality, acting through its directorate, will identify trees that will be protected and receive status of monuments and such trees will be placed on a Landmark Tree Data List

3.6.2 The monument status of a tree will be determined by the following factors:

3.6.2.1 If the tree was planted by a celebrity, whether a political or non-political figure;

3.6.2.2 If the tree is a rare and unique specimen as identified by the Municipality;

3.6.2.3 If the tree has historical significance;

3.6.2.4 If the tree is uniquely large and old in the landscape;

3.6.2.5 If the tree is a protected indigenous species;

3.6.2.6 If the tree is an internationally protected species;

3.6.2.7 If it is part of an avenue of trees that is very old and unique.

**3.7 Unaccepted reasons given for tree removal applications:**

3.7.1 Trees will not be removed for the following reasons, although a combination of these factors might be considered, but in such a case it is likely that the tree that causes the problem is already a declared problematic tree. Therefore, if a tree is not a problematic tree, these reasons should be considered as unreasonable.

3.7.1.1 Trees that are shedding their leaves

3.7.2.2 Trees that are dropping fruits and flowers

3.7.3.3 Trees that are old

3.7.4.4 Trees that are over shading an area or buildings

3.7.5.5 Trees that are dripping/excreting glue, pollen or any natural substance. In the case where a person is suffering from an allergy, presumed that it is caused by any part or excretion of the tree, such person will be required to prove (by means of an allergy test) that he/she shows a positive allergenic reaction to the tree or product thereof. The Municipality will be entitled to request such laboratory results. To act on such a complaint is entirely left to the discretion of the Municipality.

3.7.6.6 Trees that are diseased.

3.7.7.7 Trees that are naturally growing skew (excluding trees that are in the process of falling over and/or threatens to do so

3.7.8.8 Trees that are poisoned and damaged. Trees will only be removed when the tree is completely dead unless it proves to be dangerous to its surroundings

3.7.9.9 In all of these cases the request for tree removal will be investigated thoroughly by the municipality and with due respect.

**3.8 Pruning of trees on open spaces and sidewalks**

3.8.1 Trees will be pruned at the request of any person, whether such request is made personally, telephonically or in writing.

3.8.2 The Municipality will do pruning according to arboricultural standards and will not entertain requests that deviates from these standards.

**3.9 Street Trees**

3.9.1 A person may apply personally, telephonically or in writing for the planting of a tree on the pavement adjoining such person’s property.

3.9.2 The Municipality will investigate the area for tree planting to determine the most appropriate tree species, the quantity and position of planting and advise the applicant in writing of the outcome of its investigation.

3.9.3 The Municipality will mark the planting position of the trees in a conspicuous manner.

3.9.4 The applicant will be responsible to dig the holes and plant the trees in a prescribed manner.

3.9.5 The Municipality will deliver the trees upon completion of the holes.

3.9.6 The Municipality will only supply trees that are in stock and does not undertake to comply with special requests.

3.9.7 Trees supplied by the Municipality remain the property of the Municipality and may not be removed or pruned without the permission of the Municipality.

**3.10 Privately planted trees on sidewalks**

3.10.1 Where any person plants a tree on a pavement or on an open space belonging to the Municipality with or without obtaining permission from the Municipality to do so, such tree will become the property of the Municipality when it has taken root.

3.10.2 Should the Municipality in its sole discretion deem the tree so planted as unsuitable for any reason, it may request the planter thereof to remove such tree and if the planter fails to do so, the Municipality will remove the tree.

**3.11 Problematic trees**

3.11.1 All trees declared as invaders by the Conservation of Agricultural resources Act, Act 43 of 1983 and its amendments, receive no protection from the Municipality. These trees must be removed over time and be replaced by indigenous trees.

3.11.2 The Municipality may add certain tree species to the list of problematic trees if the nature of the tree warrants such action. This must be preceded by a report from the Sub-Directorate of Parks Management in which such a declaration is recommended and subsequently approved by the Council.

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| CHAPTER 4GENERAL PROHIBITION |

**4.1 Prohibited activities**

4.1.1 Any person who undertakes an activity or behaves in a manner that is prohibited in terms of this By-law, commits an offence unless, in addition to any exceptions contained in sections 12 to 19, that activity or conduct–

1. takes place in a designated area within which that activity or conduct is allowed; or
2. is authorised in terms of a permission granted or permit issued in terms of section 6.1,6.2 or 6.3; or
3. is deemed to be authorised by the Council under subsection (2).

4.1.2 Subject to the provisions of subsection (3), a person is not in contravention of any provision of section 12 to 19 if that person needs to undertake the prohibited activity –

1. 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;
2. 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;
3. to fulfil his or her duties as an authorised official; or
4. to fulfil his or her duties as a peace officer.

4.1.3 Subsection 4.1.2) must not be interpreted to allow a contravention of section 4.2(a) or (e) or any activity which the Council has expressly refused to permit.

**4.2 General prohibition**

4.2.1 No person may within a public open space –

1. act in a manner which is dangerous to life or property;
2. contravene the provisions of any notice within any public open space;
3. unlawfully enter a public open space to which access has been restricted in terms of section 8;
4. cause a nuisance; or
5. behave in an indecent or offensive manner.

**4.3 Prohibited use**

4.3.1 No person may within a public open space –

1. bathe, wade, or swim in or wash him- or herself, an animal or any object, including clothing, in any water body;
2. make, light or otherwise start a fire except in a facility provided by the Council for that purpose;
3. camp or reside;
4. consume, brew, store or sell any alcoholic beverage;
5. use any sound equipment, including a radio, portable hi-fi or car stereo;
6. play an active game, except in an area designated for that purpose on a sport playing field or on a golf course; or
7. shoot a projectile of any nature.

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| CHAPTER 5GENERAL PROVISIONS IN TERMS OF PUBLIC OPEN SPACES |

**5.1 Animals**

A person may not:

5.1.1 take into or have an animal in any public open space where a notice prohibiting the admission of animals is exhibited; or

5.1.2 bring or allow any animal in his charge to enter onto a public open space unless such animal is kept under proper control and effectually restrained from causing a noise or danger to any person; or

5.1.3 bathe or wash any animal or allow any animal under his charge or control to be washed in any pond, stream, fountain, ornamental water structure or dam;

5.1.4 leave any faeces deposited by an animal under his control in a public open space but will remove such faeces provided that this provision will not apply to a blind person being led by a guide dog or to grazing animals where a permit was issued for such purpose.

**Grazing Animals:**

5.1.5 Farmers, whether commercial or subsistence, may apply for a permit to use designated open spaces for animal grazing.

5.1.6 Applications for such permits will be submitted in writing to the Municipality.

5.1.7 The applicant will place a visible notice on the proposed site for a period of 30 calendar days, whereby comments or objections are invited. The relevant Directorate of the Municipality will then review comments and objections and resolve them where possible

5.1.8 A permit will then be issued under the following conditions:

5.1.8.1 That the land in question is suitable for grazing in terms of vegetation, soil stability and gradient.

5.1.8.2 That the numbers of animals not exceed the grazing potential benchmark of the land.

5.1.8.3 That the permit be subject to an annual renewal.

5.1.8.4 That the municipality has the right to withdraw such permit at any time without stating its reasons for this.

5.1.8.5 That the applicant will be responsible for any damage to the land caused by the grazing animals.

5.1.8.6 That the applicant will erect the necessary fences or provide supervision over the animals to ensure that they remain within the designated area to prevent them from becoming a nuisance.

**5.2 Waste**

5.2.1 No person may within a public open space –

1. deposit, dump or discard any waste, other than in a receptacle provided by the

Council for that purpose; or

1. pollute or deposit any waste or thing in a manner which may detrimentally impact on a water body.

**5.3 Vegetation**

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

 space–

1. disturb, damage, destroy or remove any tree, shrub or other vegetation;
2. affix or place any printed matter on a tree;
3. plant any vegetation;
4. alter the slope or drainage pattern so as to interfere with the access of water, air or nutrients to any tree or other plant;

**5.4 Vehicles**

A person may not:

5.4.1 drive, draw or propel any cycle, or vehicle other than a wheeled chair, or a perambulator drawn or propelled by hand and used solely for the conveyance of a child or children or invalid, on any public open space, except in the places and at the times which will be defined by these By-Laws or by notices affixed or set up at or near the entrance to any such public open space;

5.4.2 drive any vehicle on any open space that may have been set aside by notice at a specified date;

5.4.3 draw, propel, stand or place any vehicle upon or over any part of a flowerbed or lawn;

5.4.4 use any part of any public open space for the cleaning of a vehicle;

5.4.5 carry out repairs or maintenance to a vehicle in a public open space;

5.4.6 park a vehicle in a public open space at any other place than at the parking area specially set aside for vehicles;

 5.4.7 drive a vehicle in a public open space while he is under the influence of alcohol or any narcotic drug.

5.4.8 Use recreational vehicles such as “All Terrain Vehicles” (ATV or quad bikes), 4x4’s on any open space, road reserve or sidewalk where no specific amenity provision is made for such a vehicle in the area in question. These vehicles are therefore prohibited to be used on any open space, road reserve or sidewalk unless the Municipality has clearly indicated with signage that such vehicles is permitted to these sites. The Municipality may in consultation with interested and affected parties set aside portions of land for use by ATV’s and 4x4 vehicles, but is not compelled to provide such facilities.

**5.5 Play Equipment**

5.5.1 Where play equipment is provided in a developed park area for the entertainment of children such equipment will not be used by a person older than 16 (sixteen) years.

5.5.2 No child under the age of 16 (sixteen) years will use the play equipment except under the direct supervision of an adult.

5.5.3 The Municipality will not be held responsible or liable for any personal injury sustained by, or the death of any person using the play equipment, or loss or damage to his property arising out of the use of the play equipment unless the Municipality has acted negligently in performing its duty of care to such person.

5.5.4 The Municipality, acting through its directorate, will where possible erect appropriate notices to warn of dangers associated with the use of the play equipment, in the immediate vicinity of the play equipment and advice the maximum age of children permitted to use the equipment.

5.5.5 The Municipality will maintain the play equipment in a proper state of repair at all times.

**5.6 Trading**

5.6.1 No refreshments will be hawked or offered for sale on a public open space without written permission of the Municipality acting through its directorate;

5.6.2 No peddler or street vendor will be allowed to trade on a public open space without the written consent of the Municipality acting through its directorate;

5.6.3 No person may gamble, participate or present gambling or games of chance in a public open space without the written consent of the Municipality acting through its directorate.

**5.7 Municipal Property and Erection of Structures**

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

 space –

1. deface, damage, destroy or remove any municipal property;
2. disturb the surface of any land, whether by digging, undertaking any earthworks or otherwise;
3. erect, build or assemble any structure, including a hut, tent, screen, bulletin board, pole, stand or stage;
4. affix or place on any municipal property, or distribute, any printed matter; or
5. plug, tamper with, or in any way damage any plumbing, electrical, heating or other fixtures or installations.

5.7.2 The provisions of subsection (1)(b) do not apply to any person who has obtained a permit in terms of section 6.3 to undertake agricultural activities in an urban agricultural public open space.

**5.8 Selling and Special Events**

5.8.1 No person may within a public open space –

1. use municipal property in a way that unfairly restricts or prevents other users of the public open space from enjoying that municipal property; or
2. except within a public open space or part thereof, which has been let to a person by the Council for that purpose, sell, hawk, offer or display any goods or articles for sale or hire;

5.8.2 No person may undertake a special event, except in terms of a permit issued in terms of section 6.

**5.9 Community Service**

5.9.1 Except in terms of an agreement entered into in terms of section 24, no person may within a public open space undertake any community or voluntary work of any description.

**5.10. Restoration or Removal Notices**

5.10.1 Unless permission or a permit to do so has been obtained in terms of section 6.1, 6.2 or 6.3, an authorised official may issue a restoration or removal notice to any person who has in a public open space –

1. damaged, defaced, disturbed, destroyed, demolished or removed vegetation or a municipal structure;
2. erected, built or assembled a structure; or
3. dumped, discarded or deposited any waste, other than in a receptacle provided by the Council for that purpose.

5.10.2 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.

**5.11 General Prohibitions**

A person may not:

5.11.1 enter or leave a public open space which is enclosed except by one of the gates or openings provided for such purpose; or

5.11.2 enter or attempt to enter any public open space which is enclosed or any temporary enclosure on a public open space where entry is prohibited by notices affixed or set up at or near the entrance of such enclosed area or temporary enclosure or climb through or over any gate or fence; or

5.11.3 kindle a fire, except at braai facilities and provided that such fire may only be kindled with firewood or charcoal and no other combustible material may be used; or

5.11.4 leave unattended any fire which he has kindled before such fire is thoroughly extinguished; or

5.11.5 allow any fire which he has kindled to spread or cause injury; or

5.11.6 pursue, capture, hunt or kill game or birds of any kind by means of nets, hunting dogs, springs, guns, catapults, traps or snares, or in any other manner or set any nets, hunting dogs, springs, traps or snares or throw any missile with intent to injure or catch any bird or animal; or

5.11.7 rob or attempt to rob any bird’s nest or disturb or remove any bird’s nest; or

5.11.8 dig or excavate any trench, hole, pit or shaft; or

5.11.9 dig, excavate, take or remove any soil, sand, gravel, clay, sod, turf, mould, stones, minerals, water or their substances; or

5.11.10 remove, damage or climb up or upon any fountain, statue, monument, post, chain, railing, fence, seat, barrier, gate, lamp, lamp post, notice board or plate, house, building, shed, urinal, closet, flagmark, beacon, boundary mark or other article or thing or deface or disfigure the same by pasting or affixing in any way any bills, papers, placards or notices or by cutting, writing, stamping, printing, drawing, or marking thereon, or in any other manner whatsoever; or

5.11.11 cut, gather, take, remove, dig up, fell, burn, pluck, break, destroy, climb up or upon, or do damage or injury to any tree, fence, gate, fencing post, pole or plant; or

5.11.12 walk, stand, sit or lie on any flowerbed or damage any flowerbed; or

5.11.13 construct any dam in any existing stream on a public open space or interfere with or divert any water course or canal on a public open space; or

5.11.14 catch, angle for, injure or in any way interfere with any fish in any stream, pond, fountain or ornamental water feature located on a public open space; or

5.11.15 wash clothes or other things in any pond, stream, fountain or ornamental water feature on a public open space, or otherwise pollute the same or any water therein in any manner except where no potable water is available in the area for residents; or

5.11.16 dry clothes or other articles on a public open space; or

5.11.17 bathe himself or any other person or any animal, or allow any animal under his charge or control to be in any pond, stream, fountain or ornamental water feature located on a public open space; or

5.11.18 deposit, dump or leave any refuse, rubbish, paper, deceased animal or other matter or thing in a public open space; or

5.11.19 defecate or urinate in any place except in such places as are provided by the Municipality for that purpose; or

5.11.20 engage in or make preparation for playing cricket, football, hockey or any other game in an organized competition except on the grounds set apart for such game; or

5.11.21 pick or harvest plants or willfully or negligently damage or injure any plant or lawn in any manner whatsoever; or

5.11.22 occupy, reside on, break up, harrow, plough, work, sow, cultivate or cause to be occupied, resided on, broken up, harrowed, ploughed, worked, sown or cultivate any part of a public open space without the written consent of the Municipality acting through its directorate; or

5.11.23 erect any post, fence, tent, booth, screen, stand, swing, or other building, erection or obstruction of any kind whatsoever without the written consent of the Municipality acting through its directorate; or

5.11.24 discharge any firearm, air-gun, firework, catapult or sling, or throw any stone, stick or other missile or use any squirt, syringe or other instrument or do anything which may endanger or be deemed a nuisance, obstruction or annoyance to the public; or

5.11.25 obstruct, disturb, interrupt or annoy any person in the proper use of any part of a public open space; or

5.11.26 use or intrude upon any water closet, urinal or other place of convenience provided for the opposite sex; or

5.11.27 address, hold or take part in any public meeting or assembly or musical performance, which has not been authorized in writing by the Municipality acting through its directorate; or

5.11.28 assault, resist, aid or incite any person to assault or resist any employee of the Municipality or any other person in the execution of his duty or the lawful exercise of any authority under these By-Laws or otherwise; or

5.11.29 remain in any enclosed public open space after the time of closing the gates, or refuse to leave such place at any time when requested to do so by any employee of the Municipality; or

5.11.30 in any public open space, brawl, fight, use profane, indecent or improper language, play loud music in any way whatsoever, behave in an indecent or offensive manner, or commit any nuisance or be under the influence of intoxicating liquor or narcotic drugs.

5.11.31 Beg in a public open space;

5.11.32 Introduce or release into a dam any kind of fish or bird species without the prior approval of the Municipality acting through its directorate;

5.11.33 Bring into or ride in a public open space on a horse, mule, donkey, camel or any other beast of burden, except with the written consent of the Municipality, acting through its directorate.

5.11.34 Distribute any circular handbill or other advertisement in park areas

5.11.35 Reside on any public open space without the prior approval of the Municipality acting through its directorate;

5.11.36 Partake in any form of sexual intercourse or sexual activity on any public open space, exposing themselves in any nude or indecent manner, display or bring onto any public open spaces any pornographic material of whatever nature or sun bathe topless.

**5.12 Penalties**

5.12.1 Any person who contravenes any of the provisions of these By-Laws will be guilty of an offence and on conviction liable to a fine not exceeding R 500.00 (FIVE HUNDRED RAND) or in default of payment, to imprisonment for a period not exceeding 6 (six) months or to such other sentence as a Court may deem appropriate.

**5.13 Tariff of fees**

5.13.1 The Municipality will determine from time to time, the fees charged in terms of these By-Laws in a tariff By-Law.

**5.14 Rights of Municipality**

5.14.1 The Municipality reserves the right to close a public open space or part thereof or to limit the use thereof to a particular group or organization for any special event but not exceeding a continuous period of 5 (Five) days;

5.14.2 The Municipality may by notices posted at or near entrance gates to enclosed public open spaces indicate the hours during which such public open space is closed to the public and may, for any special purpose close any public opens space, or any part thereof, or any building therein, to the public for such time as it may from time to time consider necessary or expedient but not for an indefinite period;

5.14.3 The Municipality will be entitled to limit the number of visitors to a park area or other public open space.

5.14.4 The Municipality may convert a public open space into a private open space and charge entrance fees subject to the following of a public participation process.

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| CHAPTER 6APPLICATIONS FOR AUTHORISATION |

**6.1. Application for permission**

6.1.1 Any person who wants to undertake a prohibited activity must make application in writing to the Council for permission to do so, which application must be accompanied by the prescribed fee.

6.1.2The Council may, after receiving an application, request the applicant to provide additional information which the Council reasonably requires in order to consider the application.

6.1.3 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 if the prescribed fee has not been paid.

6.1.4 Subject to the provisions of subsections (6.1.2) and (6.1.3), the Council must consider the application within a reasonable time and must either-

1. refuse the application; or
2. grant permission in writing to the applicant subject to such conditions as the Council may consider appropriate to best achieve the purposes of these By-laws, which may include payment of a deposit, a prescribed fee or both.

6.1.5 The Council may not grant permission for any person to behave in a manner which is prohibited in terms of section 12(a) or (e).

**6.2. Application for a Special Event Permit**

6.2.1 An application for permission to hold a special event in a public open space must be made at least 21 days prior to the proposed date of the special event.

6.2.2 The time period referred to in subsection (1) may, on good cause shown, be reduced by the Council.

6.2.3 An application in terms of subsection (1), must contain the following information:

1. The name and full contact details of the applicant, including name, postal address, telephone and fax numbers and email address, if available;
2. the nature and purpose of the special event;
3. the intended route or area proposed to be used for purposes of the special event; and
4. any permission required under Chapter 3 of these By-laws.

6.2.4 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 in the permit to the exclusion of any other person during the period specified in the permit.

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

6.3.1 An application for permission to farm in an urban agricultural public open space must contain the following information:

1. The name and full contact details of the applicant, including name, postal address, telephone and fax numbers and email address, if available;
2. the nature of the agricultural activity that the applicant proposes to undertake; and
3. the size and location of the area on which the applicant wishes to undertake the proposed agricultural activity.

6.3.2 A permit under this section may require the permit holder to pay an annual or monthly fee for the use of the land.

6.3.3 The holder of an urban agricultural permit may, subject to any condition specified in the permit, use the area of public open space specified in the permit for agricultural purposes to the exclusion of any other person.

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| CHAPTER 7CO-OPERATIVE MANAGEMENT AGREEMENTS |

**7.1 Entering into agreements**

7.1.1 The Council may enter into a written agreement with any organ of State, local community or organization to provide for –

1. The co-operative development of any public open space; or
2. the co-operative management of any public open space; and
3. the regulation of human activities within a public open space.

7.1.2 The Council may not enter into an agreement in terms of subsection (7.1.1) (b) unless it reasonably believes that entering into such an agreement will promote the purpose of these By-laws.

7.1.3 The Council must monitor the effectiveness of any agreement entered into in terms of subsection (7.1.1), 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.

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| CHAPTER 8TREE PRESERVATION ORDERS |

**8.1 General**

8.1.1 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.

8.1.2 A tree preservation order-

1. must indicate the tree or trees to which it relates; and
2. 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 or trees to which it relates, commits an offence.

8.1.3 The Council must prominently display a copy of a tree preservation order issued within 3 metres of the tree or trees to which the order relates.

**8.2 Procedure**

8.2.1 Unless, in the Council’s opinion, the issuing of a tree preservation order is required as a matter of urgency, the Council must, before issuing a tree preservation order in terms of section 8 –

1. 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;
2. notify any affected organs of State; and
3. consider any comments and objections received in response to the notice.

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| CHAPTER 9MISCELLANEOUS |

**9.1 Offences and Penalties**

9.1.1 Any person who –

1. contravenes or fails to comply with any provisions of this By-law;
2. fails to comply with any notice or other document issued or displayed in terms of this By-law;
3. fails to comply with any lawful instruction given in terms of this By-law; or
4. obstructs or hinders any authorised official in the execution of his or her duties under this By-law is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment to imprisonment not exceeding one day, for every day during the continuance of such offence after a written notice has been issued by the Council and served on the person concerned requiring the discontinuance of such offence.

**9.2 Short Title**

9.2.2 This By-law is called Mafube Local Municipality Parks and Open Spaces Management By-law, 2018.