Bergrivier, South Africa

Public Amenities By-law, 2023

Legislation as at 21 July 2023

Note: This By-law was **repealed** on 2024-01-19 by Public Amenities By-law, 2024.

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PDF created on 11 March 2025 at 08:12.

Collection last checked for updates: 7 March 2025.

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Bergrivier
South Africa

Public Amenities By-law, 2023

Published in Provincial Gazette 8799 on 21 July 2023

Commenced on 21 July 2023

[This is the version of this document from 21 July 2023 and includes any amendments published up to 7 March 2025.]

[Repealed by Public Amenities By-law, 2024 on 19 January 2024]

Under the provisions of Section 156 of the Constitution of the Republic of South Africa, 1996, the Bergrivier Municipality enacts as follows—

1. Definitions

In this by-law, unless the context otherwise indicates;

"**animal**" means any equine, bovine, sheep, goat, pig, fowl, camel, dog, cat, or other domestic animal or bird, or any wild animal or reptile which is in captivity or under the control of a person;

"**camp**" or "camping" means to occupy land by picnicking thereon, or by standing thereon with a caravan or vehicle, or erecting thereon a tent or temporary structure and using such caravan, vehicle, tent or temporary structure for the purpose of habitation or sleeping or as a shelter or protection against the weather;

"**camping area**" means land vesting in and set aside by the municipality as a public picnic, camping or caravan park site or a similar facility approved by the municipality on private land;

"**camping permit**" means a document printed and issued by the municipality for the purposes contemplated in this by-law, or the municipality's officials receipt issued against payment of the prescribed camping charges;

"**camping site**" means any part of a camping area, demarcated or assigned for the purposes of camping thereon;

"**caravan**" means any vehicle permanently fitted out for use by persons for living and sleeping purposes, whether or not such a vehicle is a trailer;

"**drunk**" means a person who, by reason of the alcohol which he or she has consumed, has lost control of his or her mental or physical faculties, or both, to such an extent as to render him or her incapable of comporting h i m/herself, or of performing any act in which he or she is engaged, with safety to him/herself, or with that regard to the rights of others which the law demands;

"**erect**" in relation to a notice board means construct, post, affix or place;

"**garden**" means any piece of land under the control of the municipality and maintained by it as a garden for use by the public;

"**mobile home**" means a factory-assembled structure approved by the municipality, with the necessary service connections made so as to be movable on site, and designed to be used as a permanent dwelling;

"**municipality**" means the Municipality of Bergrivier, established in terms of Section 12 of the Municipal Structures Act, Act 117 of 1998, and includes any political structure, political office bearer, duly authorised agent or any employee acting in connection with this by-law, by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, agent or employee;

"**Municipal Manager**" means a person appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"**notice board**" includes a sign, poster or other device on which the municipality displays information;

"**official**" means any person appointed by the municipality to perform the functions of an authorised officer under this by-law;

"**person**" includes an association or organisation;

"**public amenity**" means—

a) any land, commonage, square, camping area, caravan park, beach, swimming pool, bathing area, sports grounds, public open space, public resort, recreation site, river, dam, nature reserve, zoological, botanical or other garden, or hiking trail, including any portion thereof and any facility or apparatus therein or thereon, which is the property of, or is possessed, controlled or leased by the municipality and to which the general public has access, whether on payment of admission fees or not, but excluding a public road or street;

b) a building, structure, hall room or office, including any part thereof or any facility or apparatus therein, which is the property of, or is possessed, controlled or leased by the municipality and to which the general public has access, whether on payment of admission of fees or not; and

c) a public amenity contemplated in paragraphs (a) and (b) if it is lawfully controlled or managed in terms of an agreement between a person and the municipality;

"**public gathering or procession**" means a procession or gathering of more than 10 people;

"**public place**" means any square, building, park, recreation ground or open space which:

a) is vested in the municipality;

b) the public has the right to use; or

c) is shown on a general plan of a township filed in a deeds registry or a Surveyor-General's office and has been provided for or reserved for the use of the public or the owners of even in such township;

"**vehicle**" means any device driven by mechanical, animal, natural or human power, and includes any craft or aircraft, but does not include a wheeled-chair or a device drawn or propelled by hand and used solely for the conveyance of a child or invalid.

2. Principles and objectives

The municipality adopts this By-law with the aim of;

a) controlling access to and use of all public amenities owned by or under the control of the municipality,

b) regulating the admission of persons, animals and vehicles to public amenities,

c) determining conduct that will not be permitted within public amenities,

d) providing for the enforcement of this by-law and to provide for matters incidental thereto.

Chapter I
General provisions relating to public amenities

3. Number of visitors

The municipality may determine—

a) the maximum number of persons or vehicles that may be in or at a public amenity at any time; and

b) different classes of vehicles that may be in or at a public amenity at any time and it may differentiate between public amenities.

4. Admission to public amenity

(1) The municipality may determine the times, dates and conditions under which a public amenity is open to the public and having due regard to section 6(1)(a).

(2) The municipality may determine the activities that may or may not be undertaken in a public amenity and these include, but are not limited to—

a) the driving of a motor vehicle and different classes of motor vehicles in a public amenity;

b) kite flying, wind surfing, kite surfing and water sport activities or the use of boats or other jet propelled craft on any dam, river or beach under the control of the municipality;

(3) The municipality may grant to any person or persons, during such hours and for such period as he or she may deem fit, the exclusive use of a public amenity for games, a public meeting, fete, show or other function or entertainment.

(4) The municipality may for reasons of maintenance, development, security, safety or public health, temporarily or permanently—

a) close a public amenity or a portion thereof; or

b) suspend all or any activities thereon.

(5) Where a person in a public amenity has committed an offence in terms of this by-law, an official may order such person to leave the public amenity, and a person ordered to leave must leave the amenity by the shortest route available to the public;

(6) Where an official on reasonable grounds suspect a person wishing to enter a public amenity intends to commit an offence in or at the public amenity, he or she may refuse entry to such person.

(7) Admission to a public amenity is at own risk.

5. Entrance fees

(1) The municipality may levy different entrance fees and issue entrance tickets in respect of persons of different ages, groups of persons, or different classes of vehicles and grant concessions in respect of entrance fees payable.

(2) Entrance fees are payable at the entrance to a public amenity, except where another fee is indicated on a notice board in terms of section 6(1).

(3) An entrance ticket contemplated in subsection (1) is valid for the period contemplated in subsection (4).

(4) An entrance fee is payable in respect of each day or portion thereof during which a person, group or vehicle is in a public amenity, provided that no fee is payable for the day on which such public amenity is left, if the amenity is left before 10:00 on such day and if the day is not the day of arrival.

(5) No fee contemplated in subsection (1) is repayable where any portion of the period in respect of which such fee has been paid has not been or cannot be utilised, provided that the fee which has been paid in respect of each full day which has not been utilised may, with the approval of the municipality, be repaid upon application, and for the purposes of this subsection "full day" means a period of 24 hours commencing at 10:00 of any day.

(6) An official may require re any person in a public amenity to produce the entrance ticket issued in terms of subsection (1), and a person who fails to produce such ticket, or a person who enters a public amenity without having paid the entrance fee commits an offence.

6. Notice boards

(1) The municipality may erect a notice board at the entrance to or in the immediate vicinity of a public amenity, on which any of the following are displayed:

a) The times, dates and conditions of entry and activities that may be undertaken;

b) the fees payable; and

c) a notice of closure referred to in section 4(4).

(2) No person other than an official or other person authorised to do so in this by-law may move or alter the contents of, and no person may deface or otherwise tamper with a notice board erected by the municipality.

(3) A notice posted by the municipality in terms of subsection (1) may contain a graphic representation to convey meaning.

(4) A person who contravenes any of the provisions of this section commits an offence.

7. Consent required for certain activities

(1) No person may, without the prior written consent of the municipality at, in or upon a public amenity—

a) arrange, hold, present or attend —

(i) public entertainment;

(ii) a meeting;

(iii) a public gathering or procession, exhibition or performance; or

(iv) an auction;

b) collect money or any other goods;

c) display or distribute a pamphlet, placards, painting, book, handbill or a printed, written or painted work;

d) engage in any form of trade.

(2) No person may at or in a public amenity, undertake or perform any activity in contravention of a notice board erected in terms of section 6(1).

(3) No person may without the prior written consent of the municipality erect or establish any fence, structure, dam, shelter or anything else, and a person who has obtained such consent may only erect such fence, structure, dam, shelter or anything else at a designated area set aside for this purpose.

(4) No person may, without the prior written consent of the municipality bring into, or have in his or her possession in a public amenity a firearm, and the municipality may grant consent in the following instances only:

a) for the firing of blank cartridges during organised competitions or sports meetings;

b) in connection with the collection of specimens of marine life or birds or animals for scientific purposes;

c) for the lawful culling of animals; or

d) to signal distress in the instance where a proposed activity may require a distress signal to be given by means of a firearm.

e) A person who wishes to obtain the consent of the municipality as contemplated in subsection (1), must complete and submit the prescribed form, and the municipality may refuse or grant consent subject to any conditions it deems necessary, and subject to the prescribed fee having been paid, and a person who wishes to sell food must also comply with any laws relating to the selling of food.

(5) A person who has been granted consent in terms of subsection (4) must at all times keep the consent form in his or her possession, and must produce the form on request of an official.

(6) A person who contravenes a provision of this section commits an offence.

8. Use of public amenities

The municipality may enter into an agreement with any person in terms of which a public amenity or any part thereof may be used for the purposes and subject to the conditions set out in the agreement.

9. Permit

(1) Notwithstanding the provisions of section 4, 5(1), 5(3), and 6(1), the municipality may, on application and subject to any conditions it may impose, issue, free of charge or otherwise, a permit —

a) to a group of people, such as, but not limited to a group of *bona fide* students; or

b) to a person who is undertaking scientific, educational or similar research.

(2) The holder of a permit issued in terms of subsection (1) may, subject to any other conditions imposed in terms of the said subsection—

a) if he or she is the holder of a valid hunting licence, hunt, catch, kill or remove, fauna under the supervision, control and in accordance with the instructions of an official;

b) pick, collect or remove fauna;

c) take or remove anything of historical or scientific importance;

d) have in his or her possession diving equipment, a weapon, trap, poison or a gardening tool, living or dead fauna or flora;

e) remove any flora or carcass which has been plucked or hunted only if the official has—

(i) inspected such flora or carcass;

(ii) considered it necessary or desirable, measured the dimensions or mass, or taken a sample of such flora or carcass; and

(iii) in writing authorised the permit-holder to remove such flora or carcass; or

f) excavate soil, sand or stone or remove organic or inorganic objects.

(3) The holder of a permit must, on arrival at the public amenity display such permit to the official in control, and a person who fails to do so commits an offence.

(4) The holder of a permit who undertakes an activity in contravention of a condition imposed commits an offence.

10. Prescribed fees

The municipality may determine fees payable in terms of this By-law.

Repealed

11. Animals

(1) No person may in contravention of any prohibitions displayed on a notice board bring any animal into the public amenity.

(2) A person who is permitted to bring an animal upon a public amenity must have direct and physical control over the animal by means of a leash or other device, and may not bath, wash or allow such animal to enter or remain in any pond, fountain or ornamental water.

(3) Any animal not under the control, or apparently not under the control of a person, may, if found in or on a public amenity be impounded by the municipality and removed to a pound where it may be dealt with in terms of the by-law relating to the impoundment of animals.

(4) A person who contravenes a provision of subsection (1) or (2) commits an offence.

12. Prohibited behaviour

(1) No person—

a) who is drunk or under the influence of any drug may enter or remain in a public amenity, and such person will not be admitted to a public amenity;

b) may in or at a public amenity—

(i) break, damage, destroy, tamper with, remove, misuse, disfigure or use anything or fail to observe an instruction by the municipality;

(ii) throw or roll a rock, stone or object;

(iii) except if authorised to do so under section 9(2)(b), pull out, pick, cut or damage any flora growing in the amenity, or have such flora in his or her possession;

(iv) walk, stand, sit or lie on a flowerbed;

(v) walk, stand, sit or lie on grass in contradiction with a notice;

(vi) write, paint, draw graffiti or a symbol, emblem or the like on a structure or path;

(vii) excavate soil, sand or stone or remove organic or inorganic objects; except if authorised to do so in terms of section 9;

(viii) interfere with water flow, obstruct water, divert a stream or drain a wetland;

(ix) deface or disfigure anything provided by the municipality by pasting or affixing in any way any bills, papers, placards, notices or anything else;

(x) wash, polish or repair a vehicle, except emergency repairs;

(xi) burn refuse;

(xii) litter or dump any refuse, garden refuse or building materials;

(xiii) wash crockery or laundry or hang out clothes, except at places indicated by notice for that purpose;

(xiv) use or try to use anything provided by the municipality in an amenity for a purpose other than that for which it is designed or determined by notice;

(xv) dispose of any burning or smouldering object or throw it out of a motor vehicle;

(xvi) behave or conduct himself or herself in an improper, indecent or unbecoming manner;

(xvii) defecate, urinate or undress, except in such building or on premises intended for that purpose;

(xviii) lie on a bench or seating place provided by the municipality or use it in such a manner that other users or potential users find it impossible to make use thereof;

(xix) play or sit on play-park equipment, except if the person concerned is a child under the age of 12 years;

(xx) swim, walk or play in a fish-pond, fountain, dam, river, artificial feature or pond in contravention with a notice prohibiting such action;

(xxi) having an open wound on his or her body, enter any swimming pool or other water facility provided by the municipality;

(xxii) perform any act that may detrimentally affect the health of another person;

(xxiii) enter or use a toilet facility indicated by notice for use by members of the opposite sex;

(xxiv) stay or sleep over night other than in terms of section 14;

(xxv) bunt, injure, disturb, feed, kill, hurt, follow, disturb, ill-treat or catch an animal, or displace, disturb, destroy or remove a bird, nest or egg, or skin or gut an animal, except if authorised to do so under section 9(2)(a);

(xxvi) discharge a firearm, airgun or pistol, except if consent has been granted in terms of section 7(4);

(xxvii) discharge a bow or use a slingshot or catapult;

(xxviii) in any way whatsoever prejudice the safety, convenience or rights of other persons;

(xxix) play or conduct a game in a manner that causes annoyance or endangers public safety; or

(xxx) expose his or her body or clothe indecently;

c) may enter—

(i) or leave a public amenity other than by way of the official entry and exit point;

(ii) a public amenity without having paid the entrance fees as contemplated in section 5(1);

d) may release or introduce any wild animal, fish, bird or flora into a public amenity;

e) may, in inland waters—

(i) swim, catch fish or otherwise, or angle if not authorised to do so in terms of a notice board erected in terms of section 6(1);

(ii) catch fish with a net;

(iii) feed any fish without approval of the municipality;

(iv) wash himself or herself or clean anything;

(2) A person who contravenes a provision of subsection (1) commits an offence.

13. Vehicles

(1) No person may bring into a public amenity any truck, bus, motor vehicle, motor cycle, quad bike, bicycle or any other vehicle except in accordance with the directions of the municipality.

(2) Where a person is permitted to drive a vehicle in a public amenity he or she may not—

a) travel with the vehicle elsewhere than on a road designated for that purpose by the municipality;

b) drive the vehicle at a speed in excess of the speed indicated on a notice board erected by the municipality.

(3) The provisions of subsection (1) do not apply to an emergency vehicle while lawfully in use as such, or a vehicle used in an emergency, or a vehicle used by an official in the discharge of his or her duties while acting in an emergency.

(4) A person who contravenes a provision of subsections (1) and (2) commits an offence.

14. Camping

(1) No person may camp on any land belonging to or which is under the control of the municipality except on a camping site within the boundaries of a camping area.

(2) No person may camp in a camping area, whether continuous or otherwise for a period exceeding three months, in any period of twelve months, without the written consent of the municipality.

(3) The municipality may grant or refuse such an application subject to such conditions and for such period as it may deem fit, but not for any period in excess of a further three months.

(4) The occupier of a camping site must be the person whose name appears on the camping permit and he or she may not sublet, cede, dispose of or in any manner alienate his or her rights thereunder.

(5) Reservation of camping sites will only be considered upon receipt of a written application.

(6) The municipality may determine conditions additional to those contained in this by-law for the use of camping sites that fall under the control of the municipality.

(7) The municipality may determine conditions for the establishment of private camping facilities.

(8) A person who contravenes a provision of subsections (1), (2) and (4) or any condition imposed by the municipality in terms of subsections (6) and (7) commits an offence.

15. Caravan parks

(1) Notwithstanding the provisions of section 14 (2) the municipality may allocate ten percent (10%), or such greater percentage as it deems fit, in its sole and exclusive discretion, of the sites in a caravan park to be permanently occupied by caravans or mobile homes.

(2) The municipality may determine conditions for the establishment of private caravan parks.

(3) The municipality may determine conditions additional to those contained in this by-law for the use of caravan parks that fall under the control of the municipality.

(4) Any person who contravenes or fails to comply with any condition imposed in terms of sub sections (2) and (3) commits an offence.

Chapter II
General provisions

16. Powers of officials and offences

The officials appointed by the municipality to monitor and enforce this by-law may investigate any act or omission which, on reasonable suspicion, may constitute an offence, and a person commits an offence if he or she—

a) threatens, resists, hinders or obstructs, or uses foul, abusive or insulting language towards or at an official in the exercise of his or her powers or execution of his or her duties; or

b) falsely holds himself or herself out to be an official;

c) furnishes false or misleading information when complying with a request of an official; or

d) fails to comply with a request of an official.

17. Appeal

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal, and the reasons therefor, in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000, to the Municipal Manager within 21 days of the date of the notification of the decision.

18. Offences and Penalties

A person who contravenes any provision or fails to comply with any provision of this by-law commits an offence and shall on conviction be liable to:—

a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and such imprisonment and,

b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment, or to such additional imprisonment without the option of a fine, or to both such additional fine and imprisonment for each day on which such offence is continued and,

c) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.

19. Limitation of liability

The municipality is not liable for any damage or loss caused by—

a) the exercise of any power or the performance of any duty in good faith under this by-law; or

b) the failure to exercise any power, or perform any function or duty in good faith under this by-law.

20. Authentication and service of notices and other documents

(1) A notice issued by the municipality in terms of this By-law is deemed to be duly issued if it is signed by an officer authorised by the municipality.

(2) Any notice or other document that is served on a person is regarded as dulyserved—

a) when it has been delivered to that person personally;

b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 years;

c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained;

d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);

e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or business premises to which it relates;

f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate; or

g) when it has been delivered to his or her e-mail address.

(3) Service of a copy is deemed to be service of the original.

(4) When any notice or other document is served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.

21. Presumption

In any prosecution under this by-law it shall be presumed, unless the contrary is proven, that an animal found in a public amenity was brought into the amenity by the owner thereof, or a person under the control of the owner, or that the owner or the person allowed the animal to enter the amenity.

22. Entering into agreements

The municipality may enter into a written agreement with any person, organ of State, local community or organisation to provide for—

a) the co-operative development of any public amenity: or

b) the co-operative management of any public amenity; and c) the regulation of human activities within a public amenity.

23. Liaison Forum in Community

(1) The municipality may establish one or more liaison forums in a community for the purpose of—

a) creating conditions for a local community to participate in the affairs of the municipality;

b) encouraging a local community to participate in the affairs of the municipality; and

c) promoting the effective and safe use of public amenities.

(2) A liaison forum may consist of—

a) a member or members of an interest group, or an affected person;

b) a member or members of a community in whose immediate area a public amenity exists;

c) a designated official or officials of the municipality; and

d) the councillor responsible for public amenities.

(3) a) The municipality may, when considering an application or registration in terms of this By-law request the input of a liaison forum.

b) A liaison forum, or any person or persons contemplated in subsection (2) may, on own initiative submit an input to the municipality for

24. Conflict with other legislation

In the event of any conflict between any provision of this by-law and National and Provincial legislation, standards, policies or guidelines, the National and Provincial legislation, standards, policies or guidelines shall prevail.

25. Repeal of by-laws

The provisions of any by-laws previously promulgated by the municipality, or by any of the disestablished municipalities now incorporated in the municipality, are hereby repealed, as far as they relate to matters provided for in this by-law, and insofar as it has been made applicable to the municipality by the authorisation for the execution of powers and functions, in terms of section 84(3) of the Local Government: Municipal Structures Act, (Act 117 of I 998).

Repealed

26. Short title and commencement

This By-law shall be known as the Public Amenities By-law, and commences on the date of publication thereof in the *Provincial Gazette*.