Swartland, South Africa

Roads and Streets By-law, 2014

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Swartland
South Africa

Roads and Streets By-law, 2014

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[Amended by Parking Management By-law, 2016 on 24 June 2016]

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, Swartland Municipality, enacts as follows:—

Chapter 1
DEFINITIONS, PURPOSE AND OBJECTIVES

1. Definitions

In this by-law, the English text shall prevail in the event of an inconsistency between the different texts, and unless the context otherwise indicates:—

"**animals**" mean any horses, mules, donkeys, cattle, pigs, sheep, goats, ostriches, and other wild animals;

"**drunk**" means a person who, 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 him- or herself, or of performing any act in which he or she is engaged, with safety to him- or herself or with that regard to the rights of others which the law demands;

"**municipality**" means the Municipality of Swartland established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof 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, councillor, agent or employee;

"**municipal area**" means the area of jurisdiction of Swartland Municipality as determined in terms of the Municipal Demarcation Act, 1998;

"**municipal manager**" means a person appointed in terms of section 54A. of the Municipal Systems Act, 2000;

"**motor 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, but does not include—

(i) any vehicle propelled by electrical power derived from storage batteries and which is controlled by a pedestrian; or

(ii) any vehicle with a mass not exceeding 230 kilograms 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;

"**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 erven in such township;

"**sidewalk**" means that portion of a street between the outer boundary of the roadway of a road and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians;

"**street**" means any street, road, cycle path, thoroughfare or any other place, including—

(a) the verge of any such road, street or thoroughfare

(b) any footpath, sidewalk or similar pedestrian portion of a road reserve;

(c) any bridge, ferry or drift traversed by any such road, street or thoroughfare;

(d) any other object belonging to such road, street or thoroughfare, which has at any time been—

(i) dedicated to the public;

(ii) used without interruption by the public for a period of at least thirty years;

(iii) declared or rendered such by the municipality or other competent authority, or

(iv) constructed by a local authority, and

(v) any land, with or without buildings or structures thereon, which is shown as a street on—

(aa) any plan of subdivision or diagram approved by the municipality or other competent authority and acted upon, or

(bb) any general plan as defined in the Land Survey Act, 1927, registered or filed in a deeds registry or Surveyor General's office;

unless such land is on such plan or diagram described as a private street;

"**vehicle**" means a device designed or adapted mainly to travel on wheels, tyres or crawler tracks and includes such a device which is connected with a draw-bar to a breakdown vehicle and is used as part of the towing equipment of a breakdown vehicle to support any axle or all the axles of a motor vehicle which is being salvaged other than such a device which moves solely on rails;

"**work**" means work of any nature whatsoever undertaken on any land under the jurisdiction of Swartland Municipality and, without in any way limiting the ordinary meaning of the word, includes the erection of new building or alterations or additions to any existing building, tents or structures for recreational-, church- or any other type of gathering, excavations, the building of bridges and crossings over sidewalks, the laying of cables and pipes, the dumping of building or other material anywhere in a street or delivery to or removal from any site of any soil or material of any nature whatsoever.

2. Purpose and objectives

The Swartland Municipality, acting under the Constitution and relevant legislation, and being aware of its duty to control the use of roads, streets and sidewalks and to manage any work undertaken in such roads, streets and sidewalks so as to provide a safe environment for all people within the municipal area, adopts this by-law to provide mechanisms and guidelines for such control and management.

Chapter 2
GENERAL PROVISIONS RELATING TO ROADS AND STREETS

3. Streets and sidewalks

(1) No person may—

(a) make, construct, reconstruct, or alter a street or sidewalk—

(i) except with the written permission of the municipality, or

(ii) otherwise than in accordance with the requirements prescribed by the municipality,

(b) construct a veranda, stoep, steps or other projection or erect a post in a street or public place except with the written permission of the municipality, or

(c) without the permission of the municipality display, advertise or offer for sale any motor vehicle, motorbike, boat, vessel, caravan, trailer or any other vehicle in or on a street or public place.

(2) Beautification or improvement in the form of planting of lawn, ornamental plants or trees may be undertaken by the public on condition that—

(a) pedestrian traffic not be obstructed;

(b) traffic visibility not be obstructed; and

(c) municipal services not be damaged or influenced negatively.

4. Advertisements visible from streets

(1) No person may display any advertisement, placard, poster or bill in a street or public place—

(a) except with the written permission of the municipality, and

(b) subject to such conditions as may be determined by the municipality.

(2) This section shall not be applicable to signs which have been exempted under the provisions of the municipality's applicable by-law relating to advertising and signage.

5. Animals or objects causing an obstruction

No person may—

(a) deposit or leave any goods or articles in a street, or in an area designated therefor, other than for a reasonable period during the course of the loading, off-loading or removal thereof, or

(b) in any way obstruct the pedestrian traffic on a sidewalk by bringing or allowing to be brought thereon any animal, object or vehicle (other than a pram or wheelchair which is being used for the conveyance of children or the disabled), or

(c) cause or allow any blind, awning, cord or other object to project or to be stretched over or onto a street—

(i) except with the written permission of the municipality, and

(ii) subject to such conditions as may be determined by the municipality.

6. Trees in streets

The management and protection of trees in roads, streets or public places will be undertaken in terms of the municipality's tree policy and any person who wishes to plant, remove, prune or cut down any tree or shrub in a road, street or public place must obtain the permission of the municipality to do so.

7. Trees or growth causing an interference or obstruction

(1) Whenever there is upon any property any tree or other growth which interferes with overhead wires or is a source of annoyance, damage, danger or inconvenience to persons using a street, the municipality may by notice in writing order the owner or occupier of such property to prune or remove such tree or growth to the extent and within the period specified in such notice.

(2) If any person fails to comply with a notice in terms of this section, the municipality may itself prune or remove the tree or growth at the expense of the person on whom the notice was served.

8. Refuse, motor vehicle wrecks, waste material, etc.

No person may—

(a) dump, leave or accumulate any garden refuse, motor vehicle wrecks, spare parts of vehicles, building or waste materials, rubbish or any other waste products in any street or public place, or

(b) permit any such objects or substances to be dumped or placed in a street or public place from premises owned or occupied by him, except with the written permission of the municipality and subject to such conditions as may be determined by the municipality.

9. Parking of heavy vehicles and caravans

(1) No person may, for an uninterrupted period exceeding two hours, except on places reserved for parking of such vehicles, park on a street or public place—

(a) a motor vehicle with a tare exceeding 3500 kg;

(b) a trailer;

(c) a semi-trailer, or

(d) a caravan,

(2) Whenever a vehicle is parked in contravention of subsection (1), it is deemed that such vehicle has been parked by the owner thereof unless the contrary is proved.

10. Parking attendants

[Section 10 repealed by Parking Management by-law, published in Provincial Gazette No. 7638 of 24 June 2016.]

11. Encroachments

(1) Subject to section 3 and to such further conditions as it deems necessary, the municipality may by agreement permit encroachment on municipal property or the erection or maintenance of a veranda, balcony, sign, projecting sign or similar structure which projects in or over any street or public place;

(2) When any immovable property owned by a municipality or under the control or management of the municipality is encroached upon without permission, the municipality may take the steps necessary to remove or regularise such encroachment.

(3) The municipality may reduce the extent of a public place or street which is encroached upon by the extent of the encroachment or by such greater extent as may be desirable.

(4) A permit issued under subsection (1) is, for the purposes of subsection (2), deemed to be a regularisation of the encroachment referred to in such permit.

(5) A person who wishes to obtain the permission of the municipality as contemplated in subsection (1) must complete and submit to the municipality the prescribed form, and the municipality may issue a permit subject to the prescribed fee having been paid.

(6) The municipality may, in addition to any other penalty which may be imposed, and subject to an appropriate court order—

(a) demolish, remove or fill in the projection or projecting structure concerned; or

(b) cause such projection or projecting structure to be demolished, removed or filled in, at the cost of the owner thereof or the person responsible for such encroachment.

Chapter 3
PROHIBITION OF CERTAIN ACTIVITIES IN ROADS AND STREETS

12. Vehicle repairs in streets

No person may, in a street or public place—

(a) effect any repairs or service to a vehicle, except where necessary for the purpose of removing such vehicle from the place where it was involved in an accident, or

(b) clean or wash a vehicle.

13. Games and other acts in streets

No person may do anything in a street or public place which may endanger the life or safety of any person, animal or thing or may be a nuisance, obstruction or annoyance to the public.

14. Use of explosives

No person may in or upon a street or public place use explosives or undertake blasting operations—

(a) except with the written permission of the municipality, and

(b) subject to such conditions as may be determined by the municipality.

15. Conveyance of animal carcasses or other waste products through streets

No person may carry or convey through a street or public place the carcase of an animal or any garbage, night soil, refuse, litter, rubbish, manure, gravel or sand—

(a) unless it is properly covered, and

(b) unless it is conveyed in such type of container as will not allow any offensive liquids or parts of the load to be spilt in the street.

16. Fences on street boundaries

Subject to the provisions of the municipality's applicable by-law relating to fencing and boundary walls no person may erect a barbed-wire-, razor wire-, electrified fence or other dangerous fence on the boundary of a street or public place except with the written permission of the municipality.

17. Building materials in streets

No person may bore or cut stone or bricks, slake or sift lime, or mix building materials, or store or place building materials or any other materials in a street except with the written permission of the municipality, and subject to the requirements prescribed by the municipality.

18. Balconies and verandas

No person may, except with the written permission of the municipality—

(a) use a balcony or veranda erected beyond the boundary line of a street or public place for purposes of trading or the storage of goods, or for the washing or drying of clothes thereon, or

(b) enclose or partition a balcony or veranda erected beyond the boundary line of a street or public place or portion thereof as a living or bedroom.

19. Drying of washing on fences on boundaries of streets

No person may dry or spread washing on a fence on the boundary of a street or public place in a manner that obstructs traffic visibility.

20. Damaging of notice-boards

No person may deface, damage or in any way interfere with any notice-board, road traffic sign, street-name board or other similar sign or any hoarding which has been erected by the municipality or with consent of the municipality in a street or public place.

21. Street collections and distribution of handbills

(1) No person may—

(a) collect or attempt to collect money in a street or public place or organise or in any way assist in the organisation of such collection, except with the written permission of the municipality and subject to such conditions as may be determined by the municipality; or

(b) distribute a handbill or similar advertising material or cause it to be distributed in any street or public place or cause it to be placed on or in any vehicle without prior permission of the municipality.

(2) An application fee as determined by the municipality from time to time may be levied in respect of any application in terms of subsection (1) .

22. Poison in streets

No person other than an official of the municipality or an authorised person who administers legally approved weed-killers or poisons, may use, set or cast poison in any street or public place.

23. Roller-skating and skating on skateboards

No person may, except with the prior written permission of the municipality, skate on roller-skates or a skateboard or a similar device in or on a street or public place or in or upon an area where skating is prohibited by an applicable road traffic sign.

24. Persons to be decently clad

No person may appear in any street without wearing any clothes or not being clothed in such a manner as decency demands; provided that this provision does not apply to a child under the age of seven years.

25. Amusement shows and devices

(1) No person may set up or use in any street or public place any circus, whirligig, roundabout or other side-show or device or tent for the amusement or recreation of the public or for religious purposes —

(a) except with the written permission of the municipality and subject to such conditions as may be determined by the municipality;

(b) unless suitable sanitary conveniences for both sexes of the staff and the public have been provided; and

(c) if it is in any way dangerous or unsafe for public use.

(2) An authorised official of the municipality shall, for the purposes of inspection at all reasonable times have free access to such circus, whirligig, roundabout or other side-show or device.

26. Animals in a street

No person may allow an animal to be unattended or at large in any street or public place or allow such animal to be a danger or annoyance to the public.

27. Restriction of access to streets

No person may, without the approval of the municipality, close or barricade any street or restrict access thereto.

Chapter 4
WORK IN STREETS, PUBLIC ROADS AND SIDEWALKS AND WATER DISCHARGED ONTO ROADS AND STREETS

28. Use of vehicles that may damage street surface

(1) No person may—

(a) use a vehicle or allow it to be used in any street or public place if such vehicle is in such a defective condition that it will or may cause damage to any street or public place;

(b) drive, push, roll, pull or propel any object, machine or other material through or along a street or public place in such a way, or while such object, machine or material is in such a condition, as may damage, break or destroy the surface of the street or public place in any way;

(2) If the municipality identifies a person who, as a result of the actions referred to in subsection (1), has damaged, broken or destroyed the surface of a street, the cost of repairs, as determined by the municipality, may be recovered from the offender.

29. Obstruction on public roads and restriction of access to streets

No person may deposit or cause to be deposited or leave or cause to be left sand, stone, earth, bricks, timber, lime, cement or other building or excavated material or burning material of whatever nature on a portion of a public road, sidewalk or footpath, unless it is deposited within an enclosure in respect of which the written consent of the municipality has first been obtained.

30. Work in public roads or streets

No person may undertake work in any public road or on property belonging to the municipality without prior permission being obtained in terms of the operational manual as contemplated in section 31.

31. Norms, standards and guidelines

(1) The municipality may determine and publish norms, standards and guidelines which describe appropriate measures for work in public roads, streets or other property belonging to the municipality, and such norms standards and guidelines must be kept in the form of an operational manual.

(2) The norms, standards and guidelines contemplated in subsection (1) may differentiate between communities, geographical areas and different kinds of premises.

32. Discharge of water on public road

(1) No person may, without prior written permission of the municipality—

(a) lead or discharge water, except storm water on, over or across a public road; or

(b) by any means whatever, raise the level of water in a river, dam or watercourse so as to cause interference with or endanger a public road.

(2) A person who wishes to perform an action as contemplated in subsection (1), must submit to the municipality an application which contains full technical details of the proposed action, and the municipality may refuse or grant permission and—

(a) should the municipality refuse permission, it must supply the person with the written reasons for the refusal;

(b) should the municipality grant the permission, it may do so subject to such conditions, requirements or specifications which it may determine in each individual case.

(3) The municipality may, subject to any law which may be applicable and after obtaining permission of the owner and the occupier of the land concerned, if any—

(a) deviate a watercourse, stream or river if the deviation is necessary for—

(i) the protection of a public road or structure related to a public road; or

(ii) the construction of a structure connected with or belonging to a public road; and

(b) divert storm water from or under a public road onto private property other than land containing buildings, other structures or improvements.

33. Overflow of water in streets

No person may cause or allow any water other than rainwater to flow into a street.

Chapter 5
BEHAVIOUR IN STREETS

34. Prohibited conduct

No person may in a street—

(a) cause a nuisance to other persons by loitering, standing, sitting or lying or begging;

(b) sleep, overnight or erect any shelter, except at a place designated by the municipality;

(c) wash or dry clothes, blankets or any other domestic articles;

(d) use abusive, insulting, obscene, threatening or blasphemous language;

(e) fight or act in a riotous manner;

(f) discharge a firearm, airgun or air-pistol;

(g) annoy or inconvenience any other person by yelling, shouting or making any noise in any manner whatsoever;

(h) spit, defecate, urinate or wash himself;

(i) solicit or importune any person for the purpose of prostitution or immorality;

(j) engage in gambling;

(k) be drunk or under the influence of drugs or use intoxicating liquor or drugs.

Chapter 6
DISPLAY OF STREET NUMBERS

35. Street numbers

(1) The municipality may prescribe by notice in writing to the owner of any premises that a number allocated to such premises in terms of section 39(c) must be displayed and the owner of such premises must, within 30 days of the date of such notice, display the allocated number on the premises.

(2) A number displayed as contemplated by subsection (1) must—

(a) be displayed in a conspicuous position on the premises and must at all times be visible and legible from the adjacent street; and

(b) be replaced by the owner of the premises as often as it gets obliterated, defaced or illegible.

Chapter 7
GENERAL POWERS OF THE MUNICIPALITY

36. Municipality may act and recover costs

(1) Notwithstanding any other provisions of this by-law, the municipality may—

(a) where the permission of the municipality is required before a person may perform a certain action or build or erect anything, and such permission has not been obtained; and

(b) where any provision of this by-law is contravened under circumstances in which the contravention may be terminated by the removal of any structure, object, material or substance, serve a written notice on the owner of the premises or the offender, as the case may be, to terminate such contravention, or to remove the structure, object, material or substance, or to take such other steps as the municipality may require to rectify such contravention within the period stated in such notice.

(2) Any person who fails to comply with a notice in terms of subsection (1) shall be guilty of an offence, and the municipality may, without prejudice to its powers to take action against the offender, take the necessary steps to implement such notice at the expense of the owner of the premises or the offender, as the case may be.

37. Closure of streets or roads

(1) The municipality may permanently close or divert any street or part thereof or restrict access to any street.

(2) When the municipality decides to act in terms of subsection (1), it must give notice of such intention in terms of its communication policy; in the absence of such policy the municipality must give notice of its intention in a local newspaper in at least two official languages.

(3) Any objection against the intended action must be delivered in writing to the municipal manager within 14 days from the date of notification in terms of subsection (2) for submission to the municipality.

38. Temporary closure of streets or roads

(1) The municipality may, without complying with the provisions of section 37–temporarily close a street—

(a) for the purpose of or pending the construction, reconstruction, maintenance or repair of such street;

(b) for the purpose of or pending the construction, erection, laying, extension, maintenance, repair or demolition of any building, structure, works or service alongside, on, across, through, over or under such street—

(i) if such street is, in the opinion of the municipality, dangerous to traffic;

(ii) by reason of any emergency or public event which, in the opinion of the municipality, requires special measures for the control of traffic or special provision for the accommodation of crowds, or

(iii) for any other reason which, in the opinion of the municipality, renders the temporary closing of such street necessary, and

(2) The municipality may temporarily divert a street which has been closed in terms of subsection (1)(a).

(3) The municipal manager may in his discretion, for general information, place a notice of temporary closure in a local newspaper.

39. Construction, maintenance and naming of streets

The municipality may in its area—

(a) make, construct, reconstruct, alter and maintain streets;

(b) name and re-name streets; and

(c) allocate and re-allocate numbers to properties abutting on streets.

40. Declaration of streets

(1) The municipality may—

(a) declare any land or portion of land under its control to be a street;

(b) declare any private street or portion thereof to be a public street.

(2) When the municipality decides to act in terms of subsection (1), it must give notice of such intention in terms of its communication policy; in the absence of such policy, the municipality must give notice of its intention in a local newspaper in at least two official languages.

(3) Any objection against the intended action must be delivered in writing to the municipal manager within 14 days from the date of notification in terms of subsection (2).

Chapter 8
PROCESSIONS

41. Processions

(1) Subject to the provisions of subsection (6), no person may hold, organise, initiate, control or actively participate in a procession or gathering in a street or dance or sing or play a musical instrument, or do anything which is likely to cause a gathering of persons or the disruption or obstruction of traffic in such street or use any loudspeaker or other device for the reproduction or amplification of sound without the written permission of the municipality in terms of subsections (2) and (3).

(2) Any person who intends to perform or carry out any one or more of the actions described in subsection (1) must submit a written application for permission, which must reach the municipality at least seven days before the date upon which any such action is intended to be performed or carried out, provided that persons who intend to participate actively in a procession, or gathering need not apply to the municipality for permission and it is not illegal for such persons to participate actively in such procession or gathering if the organiser, promoter or controller has obtained the permission of the municipality.

An application made in terms hereof must contain the following—

(a) Full details of the name, address and occupation of the applicant;

(b) full details of the street or public place where or route along which any one or more of the actions prescribed in subsection (1) is or are intended to be performed or carried out, proposed starting and finishing times and, in the case of processions and gatherings, the number of persons expected to attend; and

(c) general details of the purpose of any one or more of the aforesaid actions intended to be performed or carried out.

(3) Any application submitted in accordance with subsection (2) shall be considered by the municipality, and if any one or more of the actions to be performed or carried out as proposed in such application is or are not likely to be in conflict with the interests of public peace, good order or safety, the municipality may issue a certificate granting permission and imposing conditions.

(4) The municipality may refuse to approve applications in terms of subsection (2) if an action will be in conflict with the interests of public peace, good order or safety.

(5) The municipality may withdraw any permission granted in terms of subsection (3), if, as a result of further information, the action will be in conflict with the interests of public peace, good order or safety.

(6) The provisions of this section do not apply to—

(a) wedding or funeral processions; and

(b) to a gathering or demonstration as contemplated by the Regulation of Gatherings Act, 1993 (Act 205 of 1993).

Chapter 9
GENERAL MATTERS

42. Appeal

A person whose rights are affected by a decision delegated by 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.

43. Exemption

(1) Any person may by means of a written application, in which the reasons are given in full, apply to the municipality for exemption from any provision of this by-law.

(2) The municipality may—

(a) grant an exemption in writing and the conditions in terms of which, if any, and the period for which such exemption is granted must be stipulated therein;

(b) alter or cancel any exemption or condition in an exemption; or

(c) refuse to grant an exemption.

(3) In order to consider an application in terms of subsection (1), the municipality may obtain the input or comments of the owners or occupants of surrounding premises.

(4) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipality under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.

(5) If any condition of an exemption is not complied with, the exemption lapses immediately.

44. Offences and penalties

A person who contravenes any provision or fails to comply with any provision of this by-law or who fails to comply with a notice issued in terms 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.

45. 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.

46. 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.

47. Short title and commencement

This by-law shall be known as the By-law relating to Roads and Streets and shall come into operation on the date of publication thereof in the Provincial Gazette.