

Matzikama, South Africa

Utilisation of Commonage Land by Emerging Farmers

Legislation as at 15 November 2019

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Matzikama South Africa

Utilisation of Commonage Land by Emerging Farmers By-law, 2019

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1. Introduction / purpose

This by-law is applicable to the proclaimed jurisdiction of the Matzikama Municipality and provides for the utilisation and management of commonage land made available to emerging farmers by the Municipality, as well as the control of animals on such commonage land.

2. Definitions

"**Act**" means the Animal Identification Act, 2002 ([Act 6 of 2002](#));

"**agriculture**" means the cultivation of land for the purpose of growing crops for own use and/or for financial gain;

"**commonage land**" means the portion of the municipal property earmarked by the Municipality for animal grazing, stock-farming, agriculture and any other approved agricultural activities by emerging farmers;

"**emerging farmer**" means previously disadvantaged black (Brown, African and Indian) residents of the Matzikama municipal area of jurisdiction who either have no land or insufficient land for the grazing of their animals or the cultivation of agricultural products;

"**emerging farmers' association**" means a legal entity with its own constitution and whose members consist of emerging farmers and is recognised as such by the Municipality;

"**grazing area**" means the portion of commonage land that is earmarked for the purpose of grazing by large and small stock;

"**grazing camp**" means the portion of a grazing area that is demarcated and fenced off for grazing by large and small stock;

"**land user**" means any small farmers' association or emerging farmers' association with whom the Municipality has agreed in writing to be engaged in the control or management of commonage land and includes an authorised person from such association;

"**large stock**" means cattle, horses, mules and donkeys and includes any other species which the Minister by notice in the Provincial Gazette declares as large stock for the purposes of the Act;

"**mark**" means any mark registered in terms of section 5(2) of the Act and placed on any animal for any purpose, including any representation of a mark intended to be placed on animals, as the circumstances may require, but excludes the following:

- (1) a mark made or placed on the horn or hoof of an animal;
- (2) a mark made with paint on any animal;
- (3) a clasp, rivet or tag attached to the ear, or any mark made on such clasp, rivet or tag; or

- (4) a notch or hole on the ear of an animal;

"**municipality**" means the Matzikama Municipality, established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 ([Act 117 of 1998](#)) and includes any political structures, political office-bearers, duly authorised agent or any employee acting in terms of this by-law by virtue of a power vested in the Municipality and delegated or subdelegated to such political structure, office-bearer, agent or employee;

"**person**" means a natural or legal person;

"**prescribed**" means prescribed by the Municipality;

"**resident**" means a person who is a registered voter on the Matzikama municipal voters' roll or who has a Matzikama municipal service account in his or her name;

"**small farmers' association**" means a legal entity with its own constitution and which consists of emerging farmers and is recognised as such by the Municipality;

"**small stock**" means sheep, pigs and goats and includes any other species which the Minister by notice in the Provincial Gazette declares as small stock for the purposes of the Act.

3. The leasing of commonage land

- (1) Where possible and where the need exists, commonage land belonging to the Municipality is made available to emerging farmers so that they can keep stock and farm in order create a better existence for themselves and their dependants.
- (2) Commonage land is leased to small farmers' associations and emerging farmers' associations only, and not to individuals.
- (3) Small farmers' associations and emerging farmers' associations who wish to lease commonage land from the Municipality on behalf of their members, must apply to the Municipality for recognition, which application must include the constitution and members' register of emerging farmers who must also be residents.
- (4) Recognised small farmers' associations and emerging farmers' associations, also known as land users, must submit any amendments to their constitution and/or members' register to the Municipality annually before 31 May.
- (5) In the event of failure to comply with the lease conditions or the provisions of subsection (4), the Municipality reserves the right to withdraw the recognition of the land user concerned and to terminate any lease agreement with such land user.
- (6) Lease periods are determined per lease agreement and are renewable on application by the land user, provided that a lease period may not be longer than a uninterrupted period of 9 (nine) years and 11 (eleven) months.

4. Rent

- (1) Rent for the utilisation of commonage land by land users is determined annually by the Municipality as part of the budgeting process and comes into effect on 1 July of the relevant financial year.
- (2) Rent is payable as stipulated in the relevant lease agreement, provided that failure to pay the rent due may lead to the termination of the agreement.

5. Establishment of grazing camps for animals

The Municipality may reserve and fence off a portion of commonage land as a grazing area and establish grazing camps in the area or allow that fenced-off grazing camps for the stock of emerging farmers be established.

6. Closure of camps

- (1) The Municipality may, when deemed necessary for the maintenance and/or re-establishment of pasturage and after notification to the land users, close a grazing camp or prohibit the grazing thereon or on a portion thereof for a specified period.
- (2) No person may allow his or her animals to graze in a grazing camp that has been closed by the Municipality, irrespective the purpose or reason therefor.
- (3) Any person contravening subsection (2) is guilty of an offense.

7. Approval process to allow animals to graze

- (1) No land user may keep any animal or let any animal graze in a grazing camp and/or on commonage land before written permission has been obtained from the Municipality.
- (2) A land user who wishes to obtain the permission as contemplated in subsection (1), must submit the prescribed form to the Municipality who may, after consideration of the following factors, grant or refuse permission:
 - (a) the total number of animals already allowed in the grazing camp; and
 - (b) the number and type of animals that the applicant has applied for to be released in the grazing camp;
- (3) The approval contemplated under subsection (1) may be granted subject to the condition(s) or provision(s) deemed necessary by the Municipality.
- (4) The right to allow grazing is personal to the land user and no land user is entitled to transfer or cede such right in any manner.
- (5) A land user contravening subsection (1) or failing to comply with the provisions in terms of subsection (3), is guilty of an offense.

8. Restriction of animals to grazing camps / commonage land

- (1) A land user who lets animals graze in the grazing camp or on commonage land must restrict the stock to the camp allocated by the Municipality.
- (2) A land user contravening subsection (1) is guilty of an offense.

9. Number and condition of animals

- (1) The Municipality may determine the number and type of animals kept by a land user on the commonage land.
- (2) A land user who keeps an animal on the commonage land, must personally ensure that the animal is in a healthy condition.
- (3) The Municipality may require a land user who applies for or already keeps an animal on the commonage land to submit a sworn affidavit regarding the ownership and condition of the animal to the Municipality.
- (4) Any land user who –
 - (a) keeps more animals on the commonage land than those contemplated in subsection (1); or
 - (b) fails to keep an animal in a healthy condition in terms of subsection (2); or
 - (c) fails to submit an affidavit as stipulated in subsection (3); or
 - (d) provides false information to the Municipality, is guilty of an offense.

10. Marking of animals

- (1) A land user who lets any stock graze on the commonage land, must personally ensure that all animals are marked in terms of Section 7 of the Act.
- (2) No land user may keep or let any animal graze on the commonage land before the animal is marked.
- (3) Stock found on the commonage land without any marks, may be impounded by the Municipality and pound fees as approved in the budget or as stipulated in the Municipality's By-law on the Impoundment of Animals shall be charged.

11. Infected animals

- (1) No land user may bring any stock infected with any transmittable or contagious disease, or suspected of being infected with such disease, onto commonage land or let them graze on such land.
- (2) Any stock found on the commonage land that is suspected of being infected with any contagious or transmittable disease, must be examined by a veterinarian at the expense of the owner of such stock, and if the veterinarian finds such infection to be contagious or transmittable, he or she may arrange for such stock to be placed under quarantine or to be destroyed.
- (3) Any person contravening subsection (1) commits an offense.

12. Carcasses of animals

- (1) If an animal dies on the commonage land, the land user must arrange for the carcass to be buried elsewhere within 24 hours of discovery of the carcass, provided that if the land user fails to do so, the Municipality will bury the carcass and recover the costs from the land user.
- (2) A land user who fails to remove and bury a carcass as contemplated in subsection (1), is guilty of an offense.

13. Prohibited behaviour

- (1) No person or land user may, without the prior permission of the Municipality –
 - (a) build any hut, shelter, kraal, dwelling or structure of any kind on commonage land, nor live, camp or squat on any part on the commonage land;
 - (b) collect, dump or place any car wreck, other vehicles, machines or any scrap thereof on any part of commonage land;
 - (c) dig and/or remove soil, clay, sand, gravel or stone from the commonage land;
 - (d) manufacture bricks or construct brick, lime or charcoal furnaces on commonage land;
 - (e) cut, damage, burn, destroy, collect or remove any plant, bark, tree, wood, firewood, undergrowth, bush, shrub, manure or any grass present on the commonage land;
 - (f) establish and/or use a road over commonage land, except roads that the Municipality may authorise from time to time, as well as roads that are prohibited by law to be utilised by the public;
 - (g) deposit any poison for any purpose whatsoever on commonage land or leave it there in any manner;
 - (h) kill, capture, keep or hunt any wild animal or bird of any description whatsoever that is present on the commonage land, or attempt to kill such wild animal or bird of any description whatsoever;

- (i) set traps of any description on commonage land;
 - (j) destroy the nest of any bird or waterfowl that is present on commonage land or remove its eggs or young ones from such nest; or
 - (k) fish in any dam, river or any water present on commonage land.
- (2) The Municipality may take any steps necessary to rectify any contravention of subsection (1) and the Municipality may recover any such costs incurred from the land user responsible for the contravention.
- (3) A land user contravening subsection (1) commits an offense.

14. Lease agreements

Any land user who lets stock graze on commonage land or in grazing camps, or who undertakes any other agricultural project on commonage land, shall conclude a lease agreement with the Municipality prior to the commencement of the project, as prescribed in the Management and Administration of Municipal Immovable Property By-law (excluding land utilised for the provision of social care).

15. Exemptions

- (1) Any person may apply to the Municipality for exemption from any provision of this by-law by means of a written representation stating full reasons therefor.
- (2) The Municipality may –
 - (a) grant an exemption in writing, setting out the terms, if any, as well as the validity period for such exemption; or
 - (b) amend or cancel any exemption or condition in an exemption; or
 - (c) refuse the grant of an exemption.
- (3) The exemption will come into effect only after an applicant has signed a written undertaking to comply with all the conditions of the Municipality in subsection (2). If any activity commences before such undertaking has been submitted to the Municipality, the exemption shall expire.
- (4) The exemption expires immediately if any condition of the exemption is not complied with.

16. Certification and serving of notices and other documents

- (1) A notice that has been served by the Municipality in terms of this by-law, shall be deemed to be duly issued if signed by an official of the Municipality.
- (2) Any notice or other document served on a person in terms of this by-law, shall be deemed to be duly served –
 - (a) if it has been handed in person to the individual concerned;
 - (b) if it has been left with a person who is estimated to be 16 years or older at the relevant person's residential or business address within the Republic;
 - (c) if it has been sent by registered or certified mail to the last known residential or business address in the Republic of the relevant person and proof thereof has been obtained from the postal service;
 - (d) should the person's address in the Republic be unknown, if it is served on his agent or representative in the Republic in the manner described in paragraphs (a), (b) or (c) ;
 - (e) should the address and agent of the relevant person or the representative in the Republic be unknown, if it is served in a visible place at the relevant grounds or business premises;

- (f) in the case of a land user, if it is served at the registered office of the land user's business premises;
 - (g) if it has been sent to the e-mail address of the relevant person on his or her request.
- (3) The serving of a copy is deemed to be the serving of an original.
- (4) Whenever a notice or other document is addressed to the owner, tenant/resident or holder of the property or served on any property, it is sufficient if such person is the owner, tenant/resident or holder of the property or is correctly indicated on such property, and it is not necessary to mention the person by name.

17. Appeal

Any person or legal person whose rights are affected by a decision of the Municipality, may in terms of Section 62 of the Local Government: Municipal Systems Act ([Act 32 of 2000](#)) appeal against the decision, with reasons for the appeal, and must be directed to the Municipal Manager within 21 (twenty-one) days from the date of notification of the decision.

18. Fines

A person who commits an offense in terms of the provisions of this by-law shall, on conviction and subject to fines prescribed in other legislation, subject him-/herself to a fine or, if he/she fails to pay, to imprisonment, or to imprisonment without the option of a fine, or to both such fine and imprisonment, and in the event of successive or continued offenses, to a fine for each day that such contravention continues, or if the person fails to pay, to imprisonment.

19. Repeal of by-laws

The provisions of any by-laws previously promulgated by the Municipality or by any of the municipalities now incorporated into the Municipality, are hereby repealed insofar as they relate to matters provided for in this by-law, and insofar as they are applicable to the Municipality through the mandate for the execution of powers and duties in terms of Section 84(3) of the Local Government: Municipal Structures Act ([Act 117 of 1998](#)).

20. Short title and commencement

This by-law is known as the Utilisation of Commonage Land by Emerging Farmers By-law and shall come into effect on the date it is published in the Provincial Gazette.