

Bergrivier, South Africa

Commonage

Legislation as at 9 November 2009

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Bergrivier South Africa

Commonage By-law, 2009

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and includes any amendments published up to 12 April 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

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

"**brand**" means any registered mark registered in terms of section 5 (2) of the Act and placed on any animal for any purpose, and includes any representation of a mark intended to be placed on any animals, as the circumstances may require, but does not include any—

- (a) mark made or placed on the horn or hoof;
- (b) mark made with paint on any animal;
- (c) clasp, rivet or tag attached to the ear, or any mark made on such clasp, rivet or tag; or
- (d) notch or hole;

"**commonage**" means land or a portion of land owned by, or under control of, the municipality, which the municipality uses, or in consultation with the community, may be utilised for such other purposes as laid down in a commonage management plan;

"**commonage management plan**" means a plan, developed with due regard to the municipality's Integrated Development Plan and in consultation with the community, which contains guidelines on the sustainable utilisation of the commonage and the preservation of the agricultural potential thereof;

"**depasture**" means to allow an animal to graze on the commonage;

"**large stock**" means cattle and equine, and includes any other species of animals which the Minister may by notice in the Gazette declare to be large stock for the purposes of the Act;

"**municipality**" means the Municipality of Bergrivier, established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, 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, councillor, agent or employee;

"**prescribed**" means prescribed by the municipality;

"**small stock**" means sheep and goats, and includes any other species of animals which the Minister may by notice in the Gazette declare to be small stock for the purposes of this Act;

2. Purpose of by-law and objectives

The purpose of this by-law is to provide for use and management of the commonage in the interests of the community of Bergrivier Municipality and to ensure the sustainable utilisation of the agricultural potential thereof and to protect the infrastructure and resources thereon.

3. Establishment of camps for grazing

- (1) The municipality may reserve and fence off a portion of the commonage and establish camps for the grazing of the stock of the residents.
- (2) The municipality may set apart portions of the commonage for the grazing of small stock and large stock.
- (3) The municipality may erect paddocks or enclosures for animals of residents.

4. Closing of camps

- (1) The municipality may, whenever it deems it necessary for a purpose such as, but not limited to, maintenance or allowing a meadow to regenerate grass growth, close and prohibit the grazing of a camp or section thereof on the commonage, during certain periods of the year.
- (2) No person may allow his or her animal to graze in a camp which has been closed by the municipality for whatever purpose or reason.
- (3) The municipality may impound an animal found in a camp which has been closed in terms of subsection (1).
- (4) A person who contravenes subsection (2) commits an offence.

5. Approval to graze animals

- (1) No person may keep or depasture any animal in a camp on a commonage without first having obtained written approval from the municipality.
- (2) A person who wishes to obtain approval must submit the prescribed form to the municipality which may, after considering the following factors, grant approval:
 - (a) for the total number of animals already accommodated in the camps;
 - (b) for the number of animals, and the kind of animal, which he or she wishes to have accommodated in a camp;
- (3) The approval contemplated in subsection (1) may be granted subject to the condition of the meadows (pastures), or the provisions of an approved grazing- or commonage management plan, and any other factor which the municipality deems necessary.
- (4) The right of depasturing is personal only, and no person is entitled to transfer or cede his or her right to another.
- (5) A person who contravenes subsection (1) or fails to comply with any condition imposed in terms of subsection (3), commits an offence.

6. Confinement of stock to camps

- (1) A person depasturing on commonage must confine his or her stock to the camp set apart by the municipality.
- (2) A person who contravenes subsection (1) commits an offence.

7. Numbers and condition of animals

- (1) The municipality may determine the numbers and kinds of animals that may be accommodated on the commonage by a person.
- (2) A person keeping an animal on the commonage must ensure that the animal is in a healthy condition.

- (3) The municipality may require from a person keeping or applying to keep an animal on the commonage to file with the municipality a sworn declaration as to the ownership and condition of the animal.
- (4) A person who—
 - (a) keeps more than the determined number of animals as contemplated in subsection (1) on a commonage;
 - (b) who fails to keep an animal in a healthy condition as contemplated in subsection (2);
 - (c) fails to file a declaration as contemplated in subsection (3); or
 - (d) provides false information to the municipality, commits an offence.

8. Branding of stock

- (1) A person who depastures any stock on the commonage must ensure that all his or her animals are branded in terms of section 7 of the Act.
- (2) No person may keep or depasture any animal on the municipal commonage without it being branded.
- (3) Stock found on the commonage without such branding, may be impounded by the municipality.

9. Grazing fees

- (1) The municipality may determine grazing fees that must be paid to the municipality.
- (2) Should a person fail to pay a grazing fee, the municipality may take such measures as provided for in its Credit Control, Tariffs and Debt Collection By-law.

10. Infected or contagious animals

- (1) No person may graze, bring or leave any stock suffering from, or suspected of being infected with, any contagious or infectious disease, on the commonage.
- (2) Any stock found on the commonage suspected of being infected with any contagious or infectious disease must, at the cost of the owner, be inspected by a veterinary surgeon, and if he or she finds that the disease is contagious or infectious, he or she may cause such stock to be isolated or destroyed.
- (3) A person who contravenes subsection (1) commits an offence.

11. Carcasses of animals

- (1) The owner of an animal which has died on the commonage must within 24 hours from discovery of the carcass cause it to be buried, and should he or she fail to do so, the municipality will bury the carcass and claim the expenses from the owner.
- (2) A person who fails to dispose of a carcass as contemplated in subsection (1) commits an offence.

12. Prohibited conduct

- (1) No person may without the prior written consent of the municipality—
 - (a) erect any hut, shelter, kraal, habitation or structure of any kind nor occupy, camp or squat on any portion of the commonage;

- (b) accumulate, dump or deposit or cause to be accumulated, dumped or deposited on any portion of the commonage any derelict motor cars or other vehicles or machinery or any derelict parts thereof;
 - (c) dig on or remove soil, clay, sand, gravel or boulders from the commonage;
 - (d) make bricks, or erect brick-, lime- or charcoal kilns on the commonage;
 - (e) cut, damage, burn, destroy, gather or remove any plants, shrubs, trees, timber, firewood, brushwood, manure or any grass growing or being upon any portion of the commonage;
 - (f) interfere with or cause damage to any fence, gate, drinking trough, water tap or other appliance or thing, or set fire to the pasture or any bush, tree, shrub on the commonage;
 - (g) make use of any road over the commonage other than roads allowed to be used by the municipality from time to time, and roads that the public have a legal right to use;
 - (h) deposit, or in any way leave, any poison for whatever purpose on the commonage;
 - (i) kill, catch, capture, or hunt, or attempt to kill, any game or birds of whatsoever description on the commonage;
 - (j) set traps of whatsoever description on the commonage;
 - (k) destroy the nests, or remove the eggs or young therefrom, of any birds or water-fowl on the commonage; or
 - (l) fish in any dam, river or any other water on the commonage.
- (2) The municipality may take, or cause to be taken, any steps necessary to rectify any contravention of subsection (1) and may claim the costs incurred by the municipality from the person responsible for the contravention.
- (3) A person who contravenes subsection (1) commits an offence.

13. Exemptions

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

14. Liaison forums in the community

- (1) The municipality may establish one or more liaison forums in a community for the purposes 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 achievement of a properly controlled and administered commonage.

- (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 commonage has been established;
 - (c) a designated official or officials of the municipality; and
 - (d) a councillor.
- (3)
 - (a) The municipality may, when considering an application for an approval, or exemption certificate 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 their own initiative give input to the municipality for consideration.

15. Commonage management plan and agreements

- (1) The municipality must, within one year after the publication of this by-law, and in consultation with the community, develop a commonage management plan as contemplated in section 1 which plan must be reviewed and adjusted annually as part of the municipality's Integrated Development Plan.
- (2) Subject to the provisions of the Asset Transfer Regulations promulgated in terms of the Municipal Finance Management Act, 2003 (Act 56 of 2003) the municipality may enter into a written agreement with any party regarding the use and management of the commonage or any part thereof.

16. 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 an official of the municipality has signed it.
- (2) Any notice or other document that is served on a person in terms of this by-law is regarded as having been duly served—
 - (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 the body corporate; or
 - (g) when it has been delivered, at the request of that person, 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.

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. 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.

20. Revocation 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 1998](#).

21. Short title and commencement

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