

PROVINCE OF THE WESTERN CAPE

**Provincial Gazette
Extraordinary**

8132

Friday, 2 August 2019

PROVINSIE WES-KAAP

**Buitengewone
Provinsiale Koerant**

8132

Vrydag, 2 Augustus 2019

Registered at the Post Office as a Newspaper

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*(*Reprints are obtainable at Room M21, Provincial Legislature Building, 7 Wale Street, Cape Town 8001.)*

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OVERSTRAND MUNICIPALITY

Notice is hereby given in terms of section 13 of the Local Government Municipal Systems Act, number 32 of 2000 that the Council of Overstrand Municipality has passed this By-law set out in the Schedule hereto.

SCHEDULE

BY-LAW RELATING TO TREES

PREAMBLE

WHEREAS the Overstrand Municipality (“the municipality”) may enact and administer by-laws for the effective administration of such matters as the control and management of trees;

AND WHEREAS it is the Municipality’s mission to ensure that the manner in which it controls, manages and develops its urban trees is conducive to the long term interests of the whole community, including future generations, of the Overstrand jurisdiction.

NOW THEREFORE BE IT ENACTED by the Council of the Overstrand Municipality as follows-

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1. DEFINITIONS

“**aftercare**” means the tree maintenance regime which is implemented once the tree has been planted;

“**area manager**” is responsible for the day-to-day administrative operations of the municipality;

“**Council**” means the Council of the Overstrand Municipality;

“**The Conservation Act**” means the Conservation of Agricultural Resources Act No 43 of 1983;

“**indigenous species**” means any tree that is indigenous to South Africa;

“**plant**” and “**planting**” means the placing of sapling trees or seeds in the ground or in a container in order for them to grow;

“**pruning**” means the horticultural practice involving the selective removal of parts of a plant, such as branches, buds, or roots;

“**Public Open Space**” and “Public Space” includes –

- a) a public road, parking area, square, park, recreation ground, sports ground, sanitary lane, open space, beach, shopping centre on municipal land, unused or vacant municipal land or cemetery which has –
 - i) been provided, reserved or set apart for use by the public; or
 - ii) been dedicated to the public;but does not include public land that has been leased by the Municipality;

“**public park**” means all zoned public open spaces, recreation areas, play grounds, botanical gardens or other gardens owned and/or managed by the municipality, squares, reserves and bird sanctuaries within the jurisdiction of the Municipality and owned and declared or rendered as such by it or other competent authority, but excluding road reserves;

“**public road**” means any road, public street, cycle path, thoroughfare or any other place, including the verge of any public road, any footpath, sidewalk, or similar pedestrian portion of the road reserve, any bridge traversed by any such public road, any other object belonging to such public road, which has at any time been dedicated to the public, and used by the public without interruption for a period of at least thirty years declared or rendered as such by the Municipality or other competent authority; constructed by the local authority; any land, with or without buildings or structures thereon, which is indicated as a public road on any plan of subdivision or consolidation or diagram by the Municipality or other competent authority and acted upon; or any general plan as defined in the Land Survey Act (Act 8 of 1997), registered or filed in the deeds registry or Surveyor General’s office, unless such land on such plan or diagram is described as a private road; and any word or expression defined in the National Building Regulations and Building Standards Act (Act 103 of 1977) that has that meaning;

“**road reserves**” a legally described area within which facilities such as roads, footpaths and associated features may be constructed for public travel and comprises the total area between boundaries shown on a cadastral plan and includes municipal land set aside and zoned for the development of roadways and related engineering services;

“**Finance Act**” means the Local Government Municipal Finance Management Act, 56 of 2003;

“**NEMBA**” means the National Environmental Management: Biodiversity Act No 10 of 2004;

“**Structures Act**” means the Local Government Municipal Structures Act, 117 of 1998;

“**Streets By-law**” means the Overstrand Municipality By-Law Relating to Streets, Public Spaces and the Prevention of Public Nuisance, 2008;

“**Systems Act**” means the Local Government Municipal Systems Act, 32 of 2000;

“**tree health**” means all factors (biotic and abiotic) that affect the vigour and productivity of a tree;

“**Tree Management**” means the protection and maintenance of the existing tree asset base in the Municipal Area, as well as the planning, planting and maintenance of future trees;

“**sidewalk**” means that portion of the verge intended for the exclusive use of pedestrians; and

“**verge**” means that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway or the shoulder;

2. TREE PLANTING

- 2.1 Application for individual and replacement tree planting on sidewalks in front of private residential and business properties must be made in writing to the relevant Area Manager.
- 2.2 All trees, including newly planted trees, on sidewalks, must be maintained and positioned so as to allow for unobstructed pedestrian movement throughout the life span of the trees.
- 2.3 No tree may obstruct lines of sight to traffic signs;
- 2.4 New trees may not be planted if they interfere with existing services, i.e. electricity, Telkom lines and other infrastructure;
- 2.5 No tree may be planted within 10 metres of an intersection or 5 metres of an existing driveway or electricity pole and/or lamp pole.
- 2.6 No person may plant a tree which has been declared a weed in terms of the regulations under section 29 of the Conservation of Agricultural Resources Act 1983 (Act No 43 of 1983).

3. FELLING AND PRUNING OF PROTECTED AND/OR ESTABLISHED TREES

- 3.1 Trees planted by the public that are deemed to be dangerous or are prohibited under section 29 of the Conservation of Agricultural Resources Act 1983 (Act No 43 of 1983) will be removed by the Municipality.
- 3.2 Trees in public places damaged by a member of the public shall either be removed or pruned by the municipality and the transgressor may be prosecuted.
- 3.3 No tree may be pruned or removed from Municipal property except by the Municipality or a contractor appointed by the Municipality.
- 3.4 The Municipality must be given notice by the property owner of any damage caused on private property by municipality- owned trees.
- 3.5 The Municipality may not fell or prune any tree growing on private property except where there is an imminent possibility of danger to life or property.
- 3.6 Trees on Municipal property will only be felled by the Municipality in the following circumstances were there are:
 - 3.6.1 dead or dying trees;
 - 3.6.2 trees that are diseased beyond recovery;
 - 3.6.3 trees causing traffic hazards where pruning will not suffice;
 - 3.6.4 trees causing electrical hazards;
 - 3.6.5 tree roots damaging underground services necessary to accommodate Municipal Services, provided no alternative is available;
 - 3.6.6 proclaimed noxious weeds or invader plants. (Regulation 15 of Conservation of the Agricultural Resources Act 43 of 1983.);
 - 3.6.7 upon request of an adjacent property owner for purposes of vehicular access, subject to the lodging of approved building plans, and where no other viable alternative is apparent. The applicant shall be liable for the cost of felling as well as for the aesthetic loss to the environment, the latter to be calculated according to the formula for valuing trees approved by Council.
 - 3.6.8 trees which pose a danger, and where the danger cannot be removed by means of pruning or other horticultural work;
 - 3.6.9 trees obstructing or interfering with lines of sight to traffic signs, traffic signals, street lights etc. that cannot be remedied by pruning.

The above list is not exhaustive.

- 3.7 Trees on municipal property shall not be felled in circumstances where they:
 - 3.7.1 interfere with radio and/or television and/or wi-fi signals and reception;
 - 3.7.2 cause allergic reactions to people;
 - 3.7.3 produce excessive shade;
 - 3.7.4 obstruct the view (other than when reducing visibility of traffic lines of sight);

- 3.7.5 obscure private advertising boards and signs (other than public signage);
- 3.7.6 cause a nuisance with respect to swimming pools;
- 3.7.7 hamper the growth of other plants;
- 3.7.8 attract insects, birds or bats because of their flowers and/or fruit.

The above list is not exhaustive.

4. FELLING AND REPLACEMENT OF TREES

- 4.1 When trees on property owned by the Municipality have to be felled and/or replaced as a result of damage caused to them for whatever reason, the replacement value of the tree will be determined by using the formula as approved by Council.
- 4.2 Requests for the felling of trees not in the interest of the Municipality shall only be considered if the applicant is prepared to pay for the value of the trees as determined by the formula approved by council;
- 4.3 Any person who inadvertently fells or damages a tree shall be liable for the costs as determined by the formula for valuing trees approved by Council.
- 4.4 Where a tree located on private property is damaged or blown over during a storm and creates an obstruction or an emergency situation, the tree or that portion of it causing the obstruction on or in a sidewalk or street or any other public place will be felled and removed by the municipality, but will the removal of the debris from the sidewalk/or street and/or public place remain the responsibility of the owner, in the alternative should the municipality remove the debris, the costs thereof will be for the account of the owner.

5. OFFENCES AND PENALTIES

- 5.1 Any person who contravenes or fails to comply with any provision of this by-law shall be guilty of an offence and on conviction be liable to a fine or to imprisonment or to both such fine and such imprisonment;
- 5.2 In addition to the provisions of section 5.1 a person whom damages a tree, whether negligently or intentionally, shall be liable for the value of the tree as determined by the formula for the valuation of trees.

6. SHORT TITLE AND COMMENCEMENT

- 6.1 This By-Law is called the Overstrand Municipality By –Law Relating to Trees;
- 6.2 This By- Law will come into operation on the date it is published in the Government Gazette