

## MOGALE CITY LOCAL MUNICIPALITY

# SIDEWALK MAINTENANCE BYLAW

The Municipal Council hereby, in terms of Section 13 of the Local Government: Municipal Systems Act 32 of 2000 and Section 84(1)(p) of Local Government : Municipal Structures Act, 117 of 1998 as amended, publishes the By-Laws set forth hereinafter, which have been approved by the Council in terms of Sections 11 and 12 of the said Act:

### Fundamental Principles:

The development of the Sidewalk Maintenance By-law is established on the following principles:

- i) Whereas the Municipality is operating and rendering essential services with a limited resource base and need to limit actions and activities which can place an undue burden on the Municipality's resources that may compromise services; and
- ii) Whereas together with the City, every citizen of the City has an obligation towards a clean and healthy environment; and
- iii) Whereas through established precedence property owners have assumed responsibility for the maintenance of sidewalks directly fronting their properties; and
- iv) Whereas the Municipality has based on principle (iii) stopped the maintenance of sidewalks directly fronting residential property and does not have the financial or operational resource base to maintain these sidewalks; and
- v) Whereas the Municipality is focusing resources on maintaining City Parks and open space; City entrances; main arterials; road reserves; traffic islands; and commercial and industrial sidewalks.

## CHAPTER ONE: GENERAL PROVISIONS

### 1.1 Property Owner Prohibitions

1.1.1 A property owner must not:

- (a) permit any garbage, debris or discarded materials to accumulate; or
- (b) without approval from the Municipality place or construct any hard surfaces or fixed installations, such as rocks, gravel, retaining walls, landscape ties, rails, asphalt, bricks, concrete structures or figurines,

on the **sidewalk**, immediately **fronting** such owner's property.

1.1.2 Gravel or rocks may be installed immediately adjacent to sidewalk and/or curb in residential areas where it forms part of a landscape feature and where it does not interfere with pedestrian traffic. Such installations must permit water infiltration and may not consist of solid concrete surfaces.

1.1.3 Placement of rocks, gravel, retaining walls and landscape ties is permissible if it is necessary to retain and structurally support access roads, prevent erosion and reduce maintenance costs but provided such installations have been approved by the Economic Services Department and Infrastructure Services Department.

1.1.4 Temporary storage of construction material on the sidewalk is permissible where a curb deposit has been paid by the relevant bordering property owner who is using the sidewalk for such limited and temporary purpose.

## 1.2 Property Owner Obligations

1.2.1 In regard to the **sidewalk** immediately **fronting** an owner's property, such property owner must:

(a) keep grass on the **sidewalk** trimmed so as to avoid traffic obstruction; and health and safety risks;

(b) keep such **sidewalk** free of overgrowth and **noxious weeds**;

(c) prune and trim hedges, trees and shrubs in the **sidewalk**, except for those

planted by the **City**, as part of a development requirement, or in accordance with subsection 1.4.7, so that a minimum vertical clearance of 2.0 meters above the sidewalk and 5.0 meters above the **roadway**, is maintained and there is no encroachment on:

(i) a **walkway**; or

(ii) a **roadway**, where there is no walkway;

(d) ensure that sight lines to intersections, driveways, walkways, service roads, and visibility to all **traffic control devices** is not restricted by modifications to the **sidewalk**, which the property owner may undertake;

(e) maintain any shrubbery, landscaping, and flower beds on the **sidewalk** below a maximum permitted height of 1.5 metres from the **sidewalk** level;

and

(f) maintain a one meter clearance for shrubbery, hedges and trees from any fire hydrant or fire hydrant valve; electrical substation, mini-substation or electrical meter; street light; water mains valves or meters; and sewer manholes.

1.2.2 The obligation to maintain the **sidewalk** as specified in subsection 1.2.1 does not apply where in the opinion of the **Executive Manager of Integrated Environmental Management** the property owner is unable to directly access the **sidewalk** due to steep grades, walls, fences or other obstructions, or where such sidewalk forms part of a road servitude ordinarily maintained by the City.

### 1.3 Property Owner Plantings in Sidewalks

1.3.1 A property owner may add flower beds, plant shrubbery, and ground cover on a **sidewalk** provided such additions comply with the requirements of sections 1.1 and 1.2.

1.3.2 A property owner may not plant a tree within a distance of 2.5 meters from the **roadbed**.

### 1.4 Authority of the Executive Manager of Integrated Environmental Management and/ or Executive Manager of Infrastructure Services

1.4.1 The **Executive Manager of Integrated Environmental Management** may require an owner of property to:

(a) remove any flower beds, plant shrubbery, and landscaping located in a **sidewalk** in accordance with section 1.3, to facilitate infrastructure installation and maintenance work that the **City** will have to undertake in the vicinity;

(b) remove any additions to the **sidewalk** undertaken by the property owner;

(c) remove or trim any trees, shrubs, hedges, or bushes growing or standing on the property adjacent to a **roadway**, where in his opinion:

(i) the safety or convenience of the public so requires; or

(ii) where any such trees, shrubs, hedges or bushes become injurious to the roadbed or subterranean infrastructure,

by giving notice in writing to the owner or occupier of such property, in accordance with subsection 1.4.2.

1.4.2 The notice referred to in subsection 1.4.1 must specify:

(a) the work to be undertaken by the **City**;

(b) the period of time within which the work must be completed;

and be served in accordance with subsection 1.4.3.

1.4.3 The notice referred to in subsection 1.4.2 must be served:

(a) on the owner of the property from which the vegetation referred to in clauses (a), (b) or (c) of subsection 1.4.1 is to be removed or trimmed, by

either:

(i) personal service, or

(ii) registered mail with acknowledgement of receipt, to the address of

the owner shown on the last property valuation roll;

provided that where the owner is a registered company, service may be accomplished according to the provisions of the *Company Registrations Act*; and

(b) on the occupier of the property from which the vegetation referred to in clauses (a), (b) or (c) of subsection 1.4.1 is to be removed or trimmed,

by either:

(i) personal service,

(ii) delivery to a mail box or other receptacle for messages, if any, on the real property, or

(iii) posting on the real property; and

(c) on any agent of the owner or occupier of the real property from which the vegetation referred to in clauses (a), (b) or (c) of subsection 1.4.1 is to be removed or trimmed, by either:

(i) personal service, or

(ii) registered mail with acknowledgement of receipt.

1.4.4 When a notice is not personally served, it is deemed to have been served on the third day after mailing, by delivering pursuant to clause (b) (ii) or by posting pursuant to clause (b) (iii) of subsection 1.4.3.

1.4.5 A property owner and the Municipality are exempt from Section 1.4 where service installations on the sidewalk are from third party companies installing communication infrastructure or any other services.

1.4.6 If the property owner, occupier or any agent of the owner or occupier does not comply with the requirements of the said notice within the period specified, the

**Executive Manager of Integrated Environmental Management** may:

(a) direct **City** staff or a contractor acting under his direction to enter onto the property to undertake the work required and specified in the notice; and

(b) invoice the property owner or occupier for the cost of such work.

1.4.7 Where the property owner or occupier fails to reimburse the **City** as required under the provisions of subsection 1.4.5, the costs of such work, if unpaid on or before

90 days after which the costs are incurred, are deemed to be taxes in arrears and will be transferred for debt collection.

1.4.8 The **City** has the authority to assume ownership of any tree, hedge or shrubbery in a **sidewalk** for the purpose of being the sole maintainer of such tree, hedge or shrubbery.

### **1.5 Restoration of the Sidewalk After Construction**

1.5.1 Upon completion of any work by the **City** under the provisions of subsection 1.4.5, which required the removal of any flower beds, plant shrubbery and landscaping, the property owner may replace such vegetation with the permission of the **Department of Integrated Environmental Management**.

1.5.2 The **City** shall not be under any obligation to replace plants removed from any sidewalk for the purpose of infrastructure installations or maintenance.

### **1.6 Installation of Services on a Sidewalk by Third Party companies**

1.6.1 A Third Party Company may only proceed to install service infrastructure on a **Sidewalk** subject to:

(a) The relevant company paying a Curb and Damage Liability Deposit to the City as determined by the relevant Rates and Tariffs Policy.

(b) An environmental authorization being obtained from the relevant Provincial Authority, where so required by the National Environmental Management Act and its regulations.

(c) The installation route being authorized by the **Executive Manager Infrastructure Services** which will take into consideration way leave agreements, registered servitudes, and vulnerable and affected municipal services.

1.6.2 A third party company may not remove any Municipal tree during the installation of its service. Chapter 3 of the Mogale City Local Municipality **BY-LAWS RELATING TO PARKS AND OPEN SPACES, MANAGEMENT OF TREES AND FACILITIES AT DAMS** will be applicable where there is no other feasible option than tree removal.

1.6.3 The third party company shall restore and rehabilitate the sidewalk to its original condition, removing all construction materials and waste to the satisfaction of the **Executive Manager of Integrated Environmental Management** and **Executive Manager of Infrastructure Services**. This obligation shall be captured in an environmental management plan which needs to form part of the third party applicant's submission to the **City** and relevant Provincial Authority.

1.6.4 The City reserves the right to deduct from the deposit contemplated under section 1.6.1 (a) any amount needed to repair and restore damages caused by the third party company to the

**Sidewalk.** The City furthermore reserves the right to claim for damages not sufficiently covered by the deposit amount.

## **CHAPTER TWO: VIOLATIONS AND PENALTIES**

**2.1** Any person who:

- (a) violates or who causes or allows any of the provisions of this bylaw to be violated; or
- (b) fails to comply with any of the provisions of this or any other bylaw or applicable statute; or
- (c) neglects or refrains from doing anything required under the provisions of this bylaw, or
- (d) obstructs, or seeks or attempts to prevent or obstruct a person who is involved in the execution of duties under this bylaw,

is deemed to have committed an infraction of, or an offence against this bylaw is liable on summary conviction, to the penalties provided for.

## **CHAPTER THREE: INTERPRETATION**

**3.1** In this bylaw, the following words have the following meanings:

<b>CITY</b>	means the Mogale City Local Municipality.
<b>DITCH</b>	means a water drainage ditch or channel located within the right-of-way of a <b>roadway</b> in the possession and control of the <b>City</b> .
<b>FRONTING</b>	means on the front, back or sides of a property parcel.
<b>EXECUTIVE MANAGER OF INFRASTRUCTURE SERVICES</b>	means the person appointed by Council to the position and includes a person designated as his alternate in an acting capacity.
<b>EXECUTIVE MANAGER OF INTEGRATED ENVIRONMENTAL MANAGEMENT</b>	means the person appointed by Council to the position and includes a person designated as his alternate in an acting capacity.
<b>ROADWAY</b>	includes a developed street, gravel road, lane, bridge, walkway, sidewalk, and crossing, but does not include a private right-of-way on private property, which is improved for use by vehicular traffic, and includes paving, underground utilities, curbs and gutters (notwithstanding the definitions and provisions of the National Road Traffic Act 93 of 1996).

<b>ROADBED</b>	means the portion of the roadway surfaced with tarmac, paving or concrete for the purpose of vehicular traffic.
<b>NOXIOUS WEEDS</b>	means any weed designated by a provincial or national regulation to be a declared weed, and includes seeds of a declared weed.
<b>SIDEWALK</b>	includes the portion of a <b>roadway</b> between the <b>road</b> or <b>curb</b> and the boundary of a property adjacent to the <b>road</b> generally reserved for walkways, road reserve, greening and in-situ infrastructure installations.
<b>THIRD PARTY COMPANY</b>	means any company or government agency or utility established in terms of relevant legislation not contracted to the <b>City</b> that wish to provide service installations such as communication lines, gas, fuel, oil, bulk water, and electricity on a <b>Sidewalk</b> and/or <b>Road Servitude</b> within the <b>City's</b> jurisdiction.
<b>TRAFFIC CONTROL DEVICE</b>	means a sign, line, meter, marking, space, barrier, or device; painted, placed or erected; to guide, regulate, warn, direct, restrict, control or prohibit traffic.

## **CHAPTER FOUR: PREVIOUS BYLAW REPEAL**

4.1 None

## **CHAPTER FIVE: SEVERABILITY AND CITATION**

5.1 If any part, section, sub-section, clause, or sub-clause of this bylaw is, for any reason, held to be invalid by the decision of a Court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this bylaw.

5.2 This bylaw is cited as “**Sidewalk Maintenance Bylaw**”.

5.3 The male gender will include the female gender and vice versa and singular will include the plural and vice versa.

## **CHAPTER SIX: APPLICATION OF BY-LAWS**

6.1 These By-laws apply to every sidewalk, road reserve, traffic island, park or open space which may be affected by the activities contemplated in this By-Law, which falls under the jurisdiction of the Municipality.

6.2 These By-laws are binding on the State.