

**THE TAITA TAVETA COUNTY PUBLIC OPEN SPACES USE AND
MAINTENANCE BILL, 2023
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**THE TAITA TAVETA COUNTY PUBLIC OPEN SPACES USE AND
MAINTENANCE BILL, 2023**

A Bill for

AN ACT of Taita Taveta County Assembly to provide for the regulation of public open spaces within the County and to provide for matters incidental thereto.

ENACTED by the Taita Taveta County Assembly as follows —

Short title

1. This Act may be cited as the Taita Taveta County Public Open Spaces Use and Maintenance Act, 2023.

Interpretation

2. In this Act, unless the context otherwise indicates:

“authorised official” means an official of Taita Taveta County, who is authorised to do, or to cause to be done any act or function in terms of this Act;

“camping” means the activity of spending a night living in a tent within a public open space.

“county” means the Taita Taveta County;

“county executive committee member” means the CEC Member appointed by the County Governor to be in charge of the use and maintenance of public open spaces.

“lake or dam” means body of water impounded on a stream or river;

“mini-bus” means a motor vehicle designed or adapted, solely or principally, for the conveyance of more than nine persons, but not more than sixteen including the driver;

“motor cycle” means a motor vehicle which has two wheels and

includes any such vehicle having a side-car attached;

“motor quadracycle” means a motor vehicle other than a tractor, which has four wheels and which is designed to be driven by the type of controls usually fitted to a motor cycle;

“motor tricycle” means a motor vehicle, other than a motor cycle or tractor which has three wheels and which is designed to be driven by the type of controls usually fitted to a motor cycle;

“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 and an internal 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.

“notice” means an official notice made by the County ;

“park” means parks, open spaces, pleasure resorts, recreation areas, gardens, squares, reserves and bird sanctuaries within the County and being held by the County, and includes all buildings, grounds and spaces situated in such areas;

“passenger bus” means a motor vehicle designed or adapted for the conveyance of more than sixteen persons including the driver;

“private property owners” means registered owners of property adjacent to public open spaces”

“property frontage” means any public land or water adjacent to a building or any front of a building.

“public holidays” means all holidays, declared as public holidays under the Public Holidays Act, or declared by the President to be a public holiday ;

“public land” means land in respect of which no individual or community ownership can be established by any legal process

“public open space” means all open space of public value, including not just land but also areas of water such as rivers, canals, lakes and reservoirs which offer important opportunities for sport and recreation and can also act as a visual amenity;

“refundable deposit” means the deposit mentioned in the tariff, determined by the County from time to time and which shall be refunded, on demand, provided, that no damage has been caused to any facility of the County, its environment or the recreation grounds during the period within which the facilities, environment, or recreation grounds are used;

Ownership and Control of public spaces

3. (1) All land laid out or which may hereafter be laid out or declared a public park, public roads and streets, sports, stadiums, public urban forest, green belts, public markets, car parks within the County shall, be maintained and used solely for the purpose for which it was laid out or otherwise reserved.

(2) Each public open space within the County shall be issued with a title deed to be held in public trust for the protection of the space from unwarranted misallocation.

(3) The County and private property owners shall have shared responsibility to maintain and improve property frontage.

Use of private land

4. The County may enter into an agreement with a private land owner whose land is idle for use as public open space for the benefit of the public.

Entrance into a park

5. (1) The County shall cause to be displayed at the entrance of a public park, a notice of the times when the public may access the park.

(2) A person shall not enter a park, except during the time indicated on the notice.

(3) A person shall not enter or leave a public park except through the designated entrance or gate.

(4) Where there is a prescribed entrance fee, a person shall not enter a public park, unless he has paid the entrance fees.

(5) Any person present in a public park shall on request, by an authorised official, produce proof of payment of the entrance fee, where such entrance fee applies.

(6) The County may suspend the payment of entrance fees on any specific day or when a public function is being held within the public park.

(7) The County may suspend the payment of an entrance fee on such other day or days as it may deem fit.

Personal behaviour

6. (1) A person, being within a public park, shall not fire a fire-arm or pellet gun, discharge fireworks, discharge a catapult or sling, throw any stone, stick or other missile, use any squirt, syringe or other instrument, or do anything which may endanger or be a nuisance to the public.

- (2) A person, being within a public park, shall not brawl, fight or use profane, indecent or improper language.
- (3) A person, being within a public park, shall not lie on a public bench or seat.
- (4) A person shall not stay in a public park overnight.
- (5) A person shall not use or intrude upon any water closet, urinal or other place of convenience provided for the opposite sex within a public park.
- (6) Except otherwise approved by the County, a person shall not consume alcohol or any other intoxicating substance within a public park.
- (7) A person, being within a public park, shall not make a nuisance of himself by consuming alcohol or any other intoxicating substance.
- (8) A person, being within a public park, shall not conduct any sexual activities.
- (9) A person shall not solicit for sex within a public park.

Protection of environment

7. (1) A person shall not remove, mark or damage any fountain, statue, monument, bust, post, chain, railing, fence, seat barrier, gate lamp post, notice board or plate, watch box, house, building, shed, urinal, water closet, flag or other fixture within a public park, or deface, or disfigure the same by pasting or affixing on it any bills, placard or notice, or by cutting, writing, stamping, printing, drawing, or marking thereon.
- (2) A person shall not cut, remove, dig up, burn, pluck, climb or cause damage to any tree or plant within a public park.
- (3) A person shall not take, dig, cut, break, or remove any gravel, sand, sod, clay, mould, soil, water or other substance within a public park.
- (4) A person shall not light a fire or do any act, which may cause a fire within the park.
- (5) A person shall not enter or attempt to enter any enclosed place, plantation or garden; or walk on any flowerbed or any grass plot, on which walking is prohibited.
- (6) A person shall not—
 - (a) encroach or;
 - (b) make any enclosure;
 - (c) erect or place any post, railing, fence, pole, peg, spike, tent, booth, screen, stand, swing or other building, erection or obstruction, in a public, park without written authorization from
the County.
- (7) A person shall not litter, deposit or leave any refuse, rubbish, paper, dead or other matter or thing in the park, other than in the place provided for such matter.

Entertainment, games etc

8. (1) A person shall not play or make preparation to play cricket, football, or any other ball game, except in the designated places and at the times set apart for such games by the County.

(2) A person, who is sixteen years and above, shall not use an entertainment apparatus such as swings, round-a-bouts, seesaws, slides or any other apparatus in a park, which has been set up in a park for the entertainment of children.

Control of animals

9. (1) The County shall cause to be displayed a notice prescribing the conditions for entry, with an animal into a park.

(2) A person shall not—

(a) take any animal into a public park or other enclosed public place in contravention of a notice exhibited in such park or enclosed public place;

(b) wash any animal, or allow any animal to be in any pond, fountain, stream or river or ornamental water feature within a park.

(3) A person shall not catch, snare or lay a trap for the catching of birds in a park without a permit from an authorized officer of the Taita Taveta County Government, Department of Agriculture, Conservation and Environment.

(4) A person shall not—

(a) take a bird's egg or nest; or

(b) shoot, chase or attempt to shoot any bird or animal, or throw any stone or stick or other missile, with intent to injure or catch any bird or animal, or in any way interfere with any fish, water-fowl or other animal.

(5) A person shall not bring into a park or ride in a park on a horse, mule, donkey or any other animal except with prior written permission of the County and such written permission shall be produced on request by any authorised official.

(6) A person who brings an animal into a public park shall keep it on a leash or otherwise within his control.

(7) A person who brings an animal into a park and the animal causes injury or damage, that person shall be liable for the damage or injury.

(8) Any person who brings an animal into a public park shall remove any faeces made by the animal, except in the case of a blind person being led by a guide dog, in which case the faeces will be removed by the maintenance team of the department.

(9) The County may impound any animal found wandering at large and uncontrolled in a park.

Prohibition of vehicles

10. (1) A person shall not—
- (a) drive, draw or propel any cycle, or vehicle, other than a wheeled chair or a perambulator drawn or propelled by hand and used solely for the conveyance of a child or children or invalid, in any park, except in the places and at the times as may be prescribed by the County Government or by notices affixed or set up at or near the entrance to any such park;
 - (b) drive any motor cycle, motor quadracycle, motor tricycle or motor vehicle, that may be set aside by notice at a specified rate;
 - (c) draw, propel, stand or place any wheeled motor vehicle, motor cycle or cycle or any machine whatsoever upon or over any part of a flowerbed or lawn;
 - (d) use any part of any park for the cleaning of any motor cycle, motor quadracycle, motor tricycle or motor vehicle;
 - (e) carry out repairs or maintenance to any motor vehicle in a park or other area;
 - (f) park a motor vehicle or motor cycle, motor quadracycle or motor tricycle in a park at any other place than at the parking areas specially set aside for motor vehicles; or
 - (g) drive any motor cycle, motor quadracycle, motor tricycle or motor vehicle, in a park while he is under the influence of alcohol or any other drug.
- (2) The County may close any road or walkway in a park either permanently or temporarily.

Trading in a park

11. (1) A person shall not sell or offer for sale any commodity, article or distribute any pamphlet, book, handbill, or other printed or written matter, within a public park, without prior written consent of the County.
- (2) A person shall not sell alcohol or prohibited drugs in a park.
 - (3) A person shall not hawk or sell refreshments or drinks in a park except in a room, building or place designated by the County.
 - (4) A peddler or street vendor shall not be allowed to trade in a park without prior permission from the County.
 - (5) A person shall not beg in a park.
 - (6) A person shall not bet, gamble, participate or present gambling or games of chance in a park.

Meetings and orchestral performances

- 12.** (1) A person shall not
- (a) present or participate in an orchestral performance in a park without written permission of the County and on such conditions as it may determine;
 - (2) A person shall not play or make sounds on any musical instrument, except with the prior written consent of the County.

Camping

- 13.** No camping overnight shall be allowed in a park except with written authorization by the Department in charge of Public open spaces within the County.

Lakes and dam waters

- 14.** (1) The use of a lake or dam surface shall be subject to such conditions as the County may determine.
- (2) A person shall not—
- (a) swim in a lake, dam, stream or river located within a park;
 - (b) Bathe himself or wash his clothes or any other item in a lake, dam, stream or river within a park;
 - (c) launch a boat, canoe, raft or any other floating object, irrespective of its propulsion mechanism, onto a lake or dam except on those sections of a lake shore specifically set apart by the County for that purpose in consultation with existing aquatic clubs.
- (2) A person shall not wash clothes or other things in any pond, fountain or ornamental water feature, stream, river or otherwise pollute any water therein.

Angling

- 15.** (1) A person shall not—
- (a) fish without a permit to fish issued by the authorized officer from the Department responsible for the use and maintenance of the park;
 - (b) fish in a lake or dam except from such portions of the lake shore that the County from time to time specially sets aside for that purpose;
 - (c) fish in a lake or dam before or after times specified by the County.
- (2) The County reserves the right to temporarily close the fishing areas or any part thereof at its own discretion.
- (3) The County may delegate the control of fishing to a third party at its discretion.

Closing of parks to the public

16. (1) The County may close a park or part of a park or limit the use of a park to a particular group or organization.

(2) The County shall, by notices posted at the entrance of a park, indicate the hours during which any park or enclosed space is closed to the public and may, for any special purpose close any park or closed space, or any part thereof, or any building therein, to the public for such time as it may from time to time consider necessary or expedient.

(3) The County may limit the number of visitors to a park or any portion thereof.

(4) An application for the use of a park by an individuals or organization for any purpose that may in any way restrict the use of the park by the general public, shall be submitted in writing to the County Executive Committee Member at least one month prior to the event for approval,

Penalties

17. (1) A person who contravenes a provision of this Act commits an offence and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding ten thousand shillings or to both such fine and imprisonment.

(2) Subject to sub section (1), where the offence continues the person shall be liable to a similar fine for each time the offence continues.

(3) In addition to the fines set out in subsection (1), the Court may order the person to compensate the County for any loss or damage incurred as a result of the contravention.

(4) The County may institute a claim in the appropriate court for the amount of such loss or damage.

(5) The County may order any person who has repeatedly contravened a provision of this Act from entering a park.

Regulations

18. The County Executive Committee member may make regulations for any matter necessary for the belter carrying out of the provisions of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principle object of this Bill is to make provisions for regulation of use of public spaces and parks.

Clause 3 and **4** sets out the ownership and control of public spaces and use of a private land as public open space.

Clause 5 of the Bill set outs the conditions for entry into a park, including the times for entry.

Clause 6 of the Bill provides for control of personal behaviour in the park to ensure the safety of other users. It prohibits shooting, fighting and betting in the park.

Clause 7 of the Bill requires visitor to the park to protect the environment.

Clause 8 of the Bill provides for restriction of entertainment activities and games in the park.

Clause 9 of the Bill provides for control of animals and entry of animals into the park.

Clause 10 of the Bill prohibits use of vehicles within a park.

Clause 11 provides for control of trade in a park, except with authorization.

Clause 12 of the bill prohibits meetings and orchestral performances.

Clause 13 prohibits camping in a park.

Clause 14 provides for control of activities within lakes and waters within the park.

Clause 15 provides for angling in a park.

Clause 16 Allows for closing of parks to allow for private functions.

Clause 17 provides for offences and penalties.

Dated the October, 2023.

HON. JOSEPH MWALEGHA

**CHAIRPERSON – LANDS & HUMAN WILDLIFE CONFLICT
RESOLUTION**