

**eTHEKWINI MUNICIPALITY: MUNICIPAL PREMISES AND FACILITIES BY-LAW, 2015**



Adopted by Council on the:

## **MUNICIPAL PREMISES AND FACILITIES BY-LAW, 2015**

**To provide for the use and control of municipal premises and facilities; to provide for the repeal of laws and savings; and to provide for matters incidental thereto.**

### **PREAMBLE**

**WHEREAS** there is a need for the Municipality to regulate the use of municipal premises and facilities;

**AND WHEREAS** it is necessary for the Municipality to control access to municipal premises and facilities and set out the requirements for the hire and use thereof;

**NOW THEREFORE** the Municipal Council of the eThekweni Metropolitan Municipality, acting in terms of section 156 read with Schedule 5 Part B of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

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**CHAPTER 1  
INTERPRETATION**

**Definitions**

1. In this By-law, unless the context indicates otherwise—

"**art**" means any creative act or object of human skill, craft or design in respect of which a municipal premises or facility may be made available for hire and use;

"**artist**" means any person who is involved in the performance or creation of an art, and "**artistic**" has a corresponding meaning;

"**authorised official**" means a person authorised to implement the provisions of this By-law, including but not limited to –

(a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) municipal or metropolitan police officers as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and

(c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

**"camping officer"** means a person who is designated by the Municipality to be in charge of a camping park;

**"camping park"** or **"caravan park"** means any area of land which has been set aside by the Municipality for use as a camping park or caravan park, or as both;

**"camping site"** means a site set aside and designated by a camping officer in a camping park for camping purposes;

**"caravan"** means a vehicle or similar movable or towable structure on wheels which is designed to permit human occupation for dwelling or sleeping purposes, and includes a mobile home, trailer or camper van;

**"caravan site"** means a site set aside and designated by a camping officer in a caravan park for the parking of a caravan, with or without a side tent;

**"community centre"** means any community premises owned or operated by the Municipality which is used or is capable of being used by members of the community for activities of an indoor sporting, cultural or recreational nature, and **"centre"** shall have a corresponding meaning;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"facility"** means any facility or structure owned by the Municipality which is or may be available for hire and use by members of the community in terms of this By-law, excluding a shopping centre;

**"hire"** means entering into a contract with the Municipality upon payment of a prescribed fee for the use of a municipal premises or facility, and **"hirer"** has a corresponding meaning;

**"Municipal Council"** or **"Council"** means the eThekweni Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

**“Municipality”** means the eThekweni Municipality, a category A municipality as envisaged in terms of section 155(1) of the Constitution of South Africa and established in terms of PN343 of 2000 (KZN);

**“municipal manager”** means a person appointed in terms of section 54A of the Systems Act as the head of administration of the municipal council;

**"municipal premises"** means any community premises owned, vested or controlled by the Municipality which is or may be available for hire and use by members of the community or freely accessible in terms of this By-law for the purpose of conducting artistic, cultural, political, recreational or religious events and excludes shopping complexes, and **“premises”** shall have a corresponding meaning;

**“Policy”** means the tariff policy adopted by the Council in term of section 74 of the Systems Act;

**“pool”** means a municipal owned or controlled swimming pool or paddling pool provided by the Municipality for the use and enjoyment of the public and includes the premises, buildings and structures on which the pool is situated in;

**"prescribed fee"** means a fee determined by the Council by resolution in accordance with the tariff policy adopted by the Council in terms of section 74 of the Systems Act; and

**“Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

### **Interpretation of By-law**

**2.** If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

### **Objects of By-law**

3.The objects of this By-law are to—

- (a) regulate and control the hiring and use of municipal premises and facilities;
- (b) standardise the fees prescribed for the hiring of municipal premises and facilities;
- and
- (c) provide for matters incidental thereto.

### **Application of By-law**

4.This By-law applies to all premises under the ownership and control of the Municipality, irrespective of the area in which they are situated, excluding –

- (a) the Albert Luthuli Complex;
- (b) the Ushaka Marine World;
- (c) the Moses Mabhida Stadium; and
- (d) any shopping complex which, although owned by the Municipality, is subject to private control and management.

## **CHAPTER 2**

### **HIRE AND USE OF PREMISES AND FACILITIES**

#### ***Part 1: Arts and culture and community centre facilities***

### **Application for hiring of premises**

5.Any person wishing to apply for the hiring of municipal premises must—

- (a) submit an application to the authorised official on the form prescribed by the Municipality for that purpose; and
- (b) make payment to the Municipality or its authorised agent of a prescribed fee for the hiring of the premises concerned before the date on which such premises are required for use by the applicant, unless otherwise permitted by the Municipality.



**Municipality's right of refusal or cancellation**

6.(1) Notwithstanding the provisions of section 5, the Municipality may refuse to hire out any premises or, if the hiring is already approved, cancel any such approval if—

- (a) the authorised official suspects on reasonable grounds that the premises applied for are to be used for an unlawful purpose or any purpose not suitable for the premises applied for; or
- (b) the premises applied for are required by the Municipality for its own use during such period of hire.

(2) In the event of the approved hiring being cancelled by the Municipality in terms of paragraph (1)(b) or for any other reason not attributable to the hirer, the hirer concerned is entitled to a refund of the prescribed fee already paid to the Municipality in respect of the premises applied for: Provided that in any other case the refund of the prescribed fee to a hirer is at the sole discretion of the Municipality.

**Use of premises**

7.(1) The hirer must use the hired premises only for the purpose indicated on the application form and subject to the terms and conditions stipulated by the Municipality, unless prior approval of the authorised official is obtained in writing authorising the use of the hired premises for any other purpose.

(2) If the hirer wishes to use the premises for the purpose of any gathering, the Municipality may refuse to grant its approval thereof unless it is satisfied that such use will not, by reason of any noise or conduct of the attendees, constitute an undue interference with the amenities of the area within which such premises are situated.

(3) Notwithstanding anything to the contrary contained in this By-law, the Municipality may refuse to grant its approval of an application to hire municipal premises if the authorised official believes on reasonable grounds that the use thereof may result in the contravention of the Municipality's Nuisance By-law, Health By-law or any other relevant legislation.

**Payment of the prescribed fee**

8.A person who has hired premises is not entitled to the use of such premises, or to gain access thereto for preparation purposes, unless and until the prescribed fee for the hire thereof has been paid in full: Provided that the Municipality may exempt any person or organisation, on good cause shown, from payment of the whole or a portion of the prescribed fee.

**Period of hire**

9. Notwithstanding any determination made by the Municipality regarding the dates and period for which the premises may be hired, the Municipality may allow the hirer reasonable access to the premises concerned prior to the commencement date of the period of hire in order to enable the hirer to make the necessary preparations and arrangements for the use thereof: Provided that the prescribed fee for the hire of the premises concerned must be paid in full before the hirer thereof may be allowed reasonable access thereto in terms of this section.

**Terms and conditions of hire**

10. A person who makes an application for the hire of premises in terms of section 5 must, subsequent to the approval of such application by the Municipality, sign a hire agreement obtainable from the municipal department responsible for the premises in question setting out the terms and conditions of such hire.

**Public display of terms and conditions of hire**

11.(1) The Municipality may display or cause to be displayed conspicuously at or near the entrance to every municipal premises the terms and conditions of hire thereof, which are incorporated by reference as part of this By-law and are deemed to be accepted by every hirer as binding irrespective of the hirer's failure or omission to sign a hire agreement referred to in section 10.

(2) Every hirer of any municipal premises shall be deemed to have acquainted himself or herself fully with and accepted the terms and conditions of hire which are conspicuously displayed on the hired premises in terms of subsection (1).

**Sub-letting**

12. A hirer must not sub-let the hired premises or any part thereof to any other person, nor may the hirer cede, pledge or renounce in favour of another person any of his or her rights or obligations under this By-law, nor allow any other person to occupy the premises without the prior written approval of the Municipality.

**Condition of premises**

13.(1) The hirer must inspect the hired premises, including any installation, appliance, fitting, accessory or furniture thereon, before commencing the use thereof.

(2) If the hirer finds that any installation, appliance, fitting, accessory or furniture on the hired premises is damaged, the hirer must record such damage on an inventory list obtainable from the Municipality in respect of the premises concerned and submit such list to the authorised official at least 24 hours before commencing the use of the hired premises.

(3) If the hirer fails either to inspect the premises or to report any damage or defects found in terms of subsection (1), it is deemed that upon commencement of occupation by the hirer everything on the premises was fully operational and in a proper state of repair, and the hirer will be held liable to the Municipality for any damage or defect found on the leased premises upon termination of the hire period.

**Public announcement and advertising**

14.(1) A person who has applied in terms of section 5 for the hire of premises must not publicly announce or advertise any function or event in respect of such application before the Municipality has notified that person in writing that the application has been approved.

(2) An approval of the hirer's application in terms of subsection (1) does not absolve the hirer concerned from due compliance with the Municipality's Advertising By-law as may be applicable to any public announcement or advertisement of the event or function concerned.

(3) Every hirer must, before vacating the hired premises, remove every poster, notice, decoration, flag, emblem, sign and other form of advertisement or direction erected or affixed by or at the instance of such hirer and make good any damage caused by such removal.

### **Overcrowding**

**15.(1)** The hirer must comply with the Municipality's requirements prescribing the maximum number of persons allowed on the premises during the hirer's use thereof so as to ensure that no overcrowding of the premises occurs at any time during the hirer's function or event.

(2) Without detracting from the generality of the requirements referred to in subsection (1), the hirer may not allow more persons admission to the premises than the number of seats available or, if seating is not provided, the maximum number of persons prescribed by notice on the premises or as stipulated in the hire agreement or in any other applicable law.

(3) The Municipality has the sole discretion to determine the maximum number of persons allowed on any hired municipal premises at any given time, taking into account the Municipality's requirements as set out in the relevant policy documents adopted by the Municipality from time to time, including but not limited to the Events Policy and Waste Management Plan, as well as any other applicable law.

### **Sale of refreshments**

**16.(1)** Neither the hirer nor any other person is entitled to sell any refreshments or food stuffs on or in the hired premises during any function or event for which the premises have been hired without the prior written approval of the Municipality.

(2) Any person wishing to sell refreshments or foodstuffs in the hired premises during the function or event for which the premises have been hired must apply in writing to the Municipality for a permit authorising such person to do so, and on such terms and conditions as may be determined by the Municipality for that purpose.

(3) If an application for the issuing of a permit in terms of subsection (2) is issued by the Municipality, the Municipality may allocate sufficient accommodation to the approved applicant wherein the goods which are necessarily required by such applicant for trading may be stored.

(4) An application in terms of subsection (2) is not necessary if the supply and sale of refreshments or foodstuffs is an integral part of the function or event or part of the fundraising activities for which the premises are hired.

### **Municipal services**

**17.(1)** The hirer is liable for any municipal services used or consumed during the function or event for which such hirer has hired the premises.

(2) The cost of the municipal services referred to in subsection (1) may be recovered by the Municipality from the hirer through the use of any one or more of the following methods:

- (a) by including an estimated amount for services as part of the hire fee;
- (b) by taking a reading of the meter for the service concerned on the hired premises immediately before and immediately after the hire period; or
- (c) by requiring the hirer to install its own meter at its own cost to measure the supply of the municipal service concerned to the hired premises prior to the commencement of the event or function in question.

### **Operation and maintenance**

**18.(1)** The Municipality may require the hirer to take such steps as the Municipality may deem necessary for the proper maintenance and operation of the hired premises for the duration of the period of hire.

(2)The authorised official is entitled to attend the hirer's function or event for the purpose of ensuring that the Municipality's requirements for the proper maintenance and operation of the hired premises are duly complied with.

(3) A hirer is not entitled to the official services of the authorised official who attends the hirer's function or event in terms of subsection (2).

(4)A hirer is not entitled to receive gratuitous cleaning or other service from the Municipality in connection with the hirer's activities during the preparation for or the duration of the function or event for which the premises are hired.

#### **Cancellation due to damage or destruction of premises**

**19.(1)**The Municipality may,at any stage, cancel the hire of any premises if—

- (a) the premises concerned are destroyed or damaged to such an extent that they are substantially unusable;
- (b) the supply of any necessary municipal service to the hired premises is disturbed or terminated due to the damage in infrastructure to such an extent that, in the opinion of the Municipality, the health or safety of the occupants thereof is likely to be adversely affected; or
- (c) subject to subsection 6(2), the Municipality, in its discretion, decides not to proceed with the hire of the premises in order to carry out or cause to be carried out the necessary repairs thereto.

(2)A decision taken by the Municipality in terms of subsection (1) must be communicated to the hirer in writing within a reasonable period after the occurrence of any one or more of the events referred to in subsection (1) giving rise to the cancellation.

#### **Cancellation due to breach**

**20.(1)**The Municipality may at any time cancel the hire of premises if—

- (a) the hirer contravenes or fails to comply with any provision of this By-law; or

(b) the hirer breaches any one or more of the terms and conditions which are stipulated by the Municipality for the hiring of the relevant premises and fails to remedy such breach within the period stipulated in a written notice delivered by the Municipality to the hirer to do so.

(2) A cancellation in terms of subsection (1) is without prejudice to any right or claim which the Municipality may have against the hirer under any provision of this By-law or any other applicable law.

**Responsibility of the hirer upon termination of the hire period**

21.(1) The hirer is directly responsible to the Municipality for the proper use and maintenance of the hired premises and, upon termination of the hire period for any reason, must—

- (a) return the premises to the Municipality in good order and condition, reasonable wear and tear accepted;
- (b) make good and repair or replace, at his or her own cost, any damage or breakage or missing article or, if required to do so by the Municipality, reimburse the Municipality for the reasonable cost of repairing, making good or replacing any broken, damaged or missing article;
- (c) vacate the hired premises within the period specified in the application form, the hire agreement or the notice of termination; and
- (d) comply with any reasonable and lawful instruction of the Municipality or the authorised official in respect of the cleaning of the premises.

(2) A hirer who fails to comply with the provisions of subsection (1) shall be liable to pay a further prescribed fee for the additional period during which he or she remains in occupation of the premises after the termination of the period of hire: Provided that the provisions of this paragraph must not be interpreted to prevent the Municipality from taking lawful steps to procure the eviction of any such hirer from the premises.

(3) If a hirer vacates the hired premises without cleaning them, either at all or to the satisfaction of the authorised official, the authorised official may undertake, or cause to be undertaken, the cleaning of the premises at the cost of the hirer.

### **Inspection of premises upon termination of the hire period**

**22.**(1) Upon termination of the hire period for any reason, an authorised official and the hirer or their respective nominees must inspect the premises for the purpose of assessing any damage thereto or loss of equipment thereon.

(2) Any damage or loss discovered during an inspection referred to in subsection (1) must be recorded in an inventory list referred to in subsection 13(2), a final copy of which must be kept by either party.

(3) The hirer is liable for any damage or loss discovered during an inspection of the leased premises referred to in subsection (1), the reasonable cost of which must be paid to the Municipality upon demand, failing which the Municipality may proceed to institute civil proceedings for the recovery thereof.

### **Insurance**

**23.**(1) A hirer must not at any time bring or allow to be brought or kept on the premises, nor do or undertake nor permit to be done or undertaken in or on the premises, anything which may render void or voidable any insurance policy taken by the Municipality in respect of the premises, or which may result in the increase of premiums payable for any such insurance.

(2) If the premiums for insurance contemplated in subsection (1) are increased as a result of any act or omission contemplated in that subsection, the Municipality may, in its discretion, allow the activity concerned to continue and recover from the hirer the amount due in respect of any additional insurance premiums and the hirer must pay such amount immediately on notification from the Municipality or the insurance company to the effect that such additional premiums have been charged.



(3) The Municipality may at any time in its discretion require the hirer to take up insurance of the premises hired with an insurance company approved by the Municipality against loss or damage by fire or any other cause during or as a result of any function or event for which the premises are hired.

### **Municipality's right of access**

**24.**(1) Subject to the Constitution and any other applicable law, an authorised official or any other person authorised by the Municipality in writing to do so may enter the hired premises at any reasonable time for the purpose of—

- (a) carrying out any repairs, alternations, additions, modifications or improvements thereon;
- (b) ensuring that the conditions of hire of the premises as set out in the hire agreement and this By-law are being complied with; or
- (c) ensuring that the health and safety regulations or any other applicable laws are duly complied with.

(2) A hirer must comply with any lawful instruction issued by the authorised official or other person referred to in subsection (1) to ensure due compliance with the conditions of hire of the hired premises.

### **Fire and security regulations**

**25.** A hirer must acquaint himself or herself with the Municipality's Fire By-laws and any other applicable legislation which are from time to time in force in respect of the premises concerned, and must act in strict compliance therewith for the duration of the hire period.

### **Community centres**

**26.**(1) The hirer of a community centre is responsible for the conduct of all members of the relevant group for every time such members and their invitees are in occupation of the hired premises.

(2) Unless permission to do otherwise has been granted by the authorised official in charge of the centre, a group activity may only take place under the supervision of the authorised official.

(3) A group activity may only take place at times allocated for such activity by an authorised official in charge of the centre.

(4) The Municipality reserves the right to stipulate the use to which a centre or any part of the premises thereof may be put, including the times when and the conditions under which any portion of a centre may be set aside for exclusive use by members of any particular group.

### **Prohibitions**

**27.(1)** A person attending any function or event in or on the hired premises must not—

- (a) conduct himself or herself in an unseemly or obnoxious manner;
- (b) cause a nuisance or annoyance to any other person in or on the hired premises or the neighbouring properties;
- (c) interfere with the amenities of the area within which the hired premises are situated;
- (d) dress inappropriately or indecently taking into account the type of function or event for which the premises have been hired; or
- (e) engage in any other conduct in contravention of this By-law, the Municipality's Nuisance and Health By-laws or any other applicable law.

(2) An authorised official may, during any function or event of a hirer, instruct the hirer to remove from the premises any person who is in a state of intoxication or who is acting in contravention of subsection (1).

(3) An authorised official may, during any function or event for which the premises have been hired, direct the hirer to prevent the entry on or into the hired premises by any person who is in a state of intoxication or who is acting in contravention of subsection (1).

## ***Part 2 : Camping and caravan parks***

### **Terms and conditions**

**28.**(1) The use and enjoyment of camping and caravan parks by any person are subject to due compliance with the applicable provisions of this By-law, as well as such terms and conditions as may be stipulated by the Municipality for the issuing of a camping or caravan permit in terms of section 29.

(2) The provisions of Part 1 are *mutatis mutandis* applicable to this Part insofar as they are relevant to the use of camping and caravan parks.

### **Application for a camping or caravan permit**

**29.**(1) Any person who wishes to make use of a camping site or caravan site must apply in writing to the camping officer for the issuing of a permit authorising such person to do so.

(2) A camping or caravan permit issued by the camping officer in terms of subsection (1) is valid for the period specified therein.

(3) A permit holder or any person accompanying such permit holder must at all times comply with the conditions specified in the relevant permit.

### **Allocation and use of sites**

**30.**(1) A camping or caravan site is allocated at the sole discretion of the camping officer in charge, and may only be used for the purpose specified in the permit issued in respect thereof.

(2) A camping or caravan site may not be used for the construction of any building or any other structure of a permanent nature other than a tent for the *bona fide* use of the permit holder and his or her party.

(3) A caravan parked on a caravan site may only be used to house the permit holder and his or her party.

#### **Extension of permits**

**31.** The period of validity of a permit may be extended at the discretion of a camping officer if the site concerned has not already been allocated to another person for the period in respect of which the extension is required.

#### **Proper use of roads and pathways**

**32.** A permit holder and any member of his or her party must travel to and from a camping site using the established roads and pathways within the camping or caravan park.

#### **Reservation of sites**

**33.(1)**A camping or caravan site may be reserved in advance, and the person making such reservation must make payment of the prescribed fee to the camping officer in charge on or before the first day of the period of reservation, failing which the reservation made by such person may lapse.

(2) A person who fails to take occupation of a reserved camping or caravan site is not entitled to a refund of the prescribed fee paid in advance in respect thereof, irrespective of the reason given by such person for failing to take occupation thereof.

#### **Right of refusal to issue or renew permits**

**34.** A camping officer may refuse to issue or renew a permit to any person whom the camping officer reasonably suspects of having contravened any provision of this By-law.

#### **Cancellation of permits**

**35.** Subject to due process in terms of the Constitution and any other applicable law, the camping officer may cancel the permit of a permit holder if such permit holder or any member of his or her party commits a breach of any provision of this By-law.

### **Prohibitions**

**36.** A person may not—

- (a) camp or light a fire for the purpose of camping upon any open space or ground owned by or under the control of the Municipality except on a camping site allocated by the camping officer in terms of this By-law;
- (b) occupy a camping site for a period longer than 30 days in any consecutive period of 12 months, unless prior approval of the camping master is obtained in writing for a further period not exceeding 10 days;
- (c) enter or loiter in or about any camping or caravan park unless such person is a permit holder or a member of a permit holder's party or a *bona fide* guest of a permit holder;
- (d) carry on any trade or business within the precinct of a camping or caravan park without the prior written approval of the Municipality;
- (e) wilfully or negligently damage any vegetation, item, equipment, structure or property belonging to the Municipality on a camping or caravan park;
- (f) bring any firearm within the camping or caravan park, except for a licensed firearm brought for the personal protection of a permit holder and his or her party, and which must be declared and registered with the camping officer immediately upon arrival at the camping or caravan park; or
- (g) shoot, trap or in any way injure or interfere with any animal, bird or fish in the camping or caravan park, except for fishing in a river or dam where a notice permitting fishing is displayed, and only if the person concerned holds a valid fishing licence issued in terms of any applicable law.

### **Site to be left in a clean and tidy condition**

**37.** A permit holder vacating a camping or caravan site must—

- (a) leave the site in a clean and tidy condition and ensure that all rubbish remaining thereon is deposited in a rubbish bin provided for that purpose; and
- (b) fill in any hole made in the ground by him or her or by any member of his or her party.

### **Part 3: Sport facilities and pools**

#### **Terms and conditions**

**38.**(1) The use and enjoyment of the sport facilities by members of the community or any other person are subject to due compliance with the applicable provisions of this By-law, the terms and conditions contained in the hire agreement, if any, as well as such terms and conditions as may be determined by the Municipality in respect thereof.

(2) The provisions of Part 1 are *mutatis mutandis* applicable to this Part insofar as they are relevant to the hiring and use of sport facilities by members of the community or any other person.

#### **Reservation of sport facilities**

**39.**(1) Due to a limited number of sport facilities in any community, the hiring of a sport facility must be arranged by prior reservation with an authorised official on a first-come-first-served basis and must be recorded in a register kept by the authorised official for that purpose.

(2) Notwithstanding the provisions of subsection (1), the Municipality may reserve for any period any sport facility for the holding of any specific sporting event or competition and may during any such period reserve to itself the right of admission to such facility and determine a fee for admission thereto.

#### **Animals**

**40.** No person may bring any animal other than a guide dog into a sport facility or pool without the prior written approval of the authorised official, unless—

(a) the bringing of an animal is authorised by a notice displayed in a conspicuous place at the entrance to a sport facility or pool; or

(b) the sport facility or pool is designed or has been hired out for an activity that necessarily involves the presence of animals.

### **Firearms and traditional weapons**

**41.** Firearms or traditional weapons may not be brought into a sport facility unless, subject to the availability of safes or other appropriate storage facilities at the entrance to the facility, they are surrendered to the authorised official for safe keeping and must be collected from that official upon departure from the sport facility.

### **Oools operating times**

**42.** (1) The days and times during which a pool will be open to the public must be displayed with the appropriate signage visible to all patrons.

(2) The Municipality reserves the right to alter the operating times of the pool.

(3) Swimming must cease 30 minutes before the closing time and all members of the public must vacate the premises on or before the closing time.

(4) Any member of the public –

(a) found to be swimming outside the operating times without the consent of the authorised official; or

(b) who refuses to vacate the pool premises at closing time,

will be guilty of an offence.

### **Admission into the pool premises**

**43.**(1) No person is permitted to enter the pool premises—

- (a) without paying the prescribed fee;
- (b) except through the entrance provided;
- (c) in advance of a person who by reason of prior payment is entitled to prior admission; and
- (d) when it is closed.

(2) Any person entering the pool premises must provide proof of payment to the authorised official before entering such premises.

(3) The Municipality may refuse entry into the pool premises–

- (a) where it is in the interest of public health and safety;
- (b) where the maximum amount of persons permitted in the premises has been reached;
- (c) where necessary or routine maintenance is being effected; or
- (d) for any other reason the Municipality sees fit to do so.

(4) All children under the age of 14 must be accompanied by an adult.

#### **Exclusive use**

**44.(1)** Upon application and the payment of a prescribed fee an authorised official may grant the exclusive use of the whole or part of the pool to a swimming club, person or body during determined periods: Provided that such use is for the purpose of organised swimming or aquatic sports.

(2) Where an application has been granted in terms of subsection (1), part of the pool or the entire pool may be closed to the public for the duration of such use.

#### **Change room facility**

**45.(1)** A separate change room for each sex must be provided.



(2) A male child over the age of seven is not permitted to enter into the female change room and a female child over the age of seven may not enter into a male change room.

(3) No person may loiter in a change room or use it for any other purpose other than for which it was designed.

### **Coaching and instruction**

**46.(1)** No person may coach or instruct individuals within the pool area, unless prior written permission has been obtained from an authorised official, which permission may be subject to terms and conditions imposed by the authorised official.

(2) No instructor may instruct more than five individuals at a time.

(3) The authorised official may give a coach or instructor 30 days notice of his intention to withdraw the permission given in terms of subsection (1).

(4) In addition to the conditions imposed in terms of subsection (1) coaches and instructors are obliged to adhere to any other additional rules or requirements imposed by the Municipality.

(5) All instructors and coaches who are required to pay a fee must pay such fee one month in advance and, where such fee has been paid, the parents and students belonging to the particular swimming club will be exempt from paying the regular entry fee on days where they are attending lessons.

(6) In addition to the terms and conditions imposed in subsections (1), (2), (4) and (5), the following terms and conditions will also apply:

(a) a maximum of 3 lanes may be set aside for each coach for the duration of the lesson;

(b) coaching will be restricted to the hours of 6am – 9am Monday to Saturday and 5pm -8pm Monday to Friday;

- (c) permission to use lanes will be granted to not more than 2 coaches in respect of each pool unless permission is granted in terms of section 44;
- (d) where exclusive use has been granted in respect of a pool, no coaching or instructing shall take place and any fee paid in respect of such coaching or instructing will not be refunded; and
- (e) if a coach or instructor has not utilised the times booked, no refund will be granted in respect of such time.

### **Prohibitions relating to pools**

#### **47(1) No person may—**

- (a) bring or cause to be brought into the pool premises any—
  - (i) ball;
  - (ii) surf board;
  - (iii) water toy or the like;
  - (iv) alcohol and narcotics;
  - (v) weapons;
  - (vi) glass or bottles; or
  - (vii) item that will be offered for sale;
- (b) dive into the pool unless it is off a diving board or platform;
- (c) swim in the nude or be dressed in a manner in which his or her private parts are exposed to the public;
- (d) enter into the change room of the opposite sex, subject to section 45;
- (e) urinate or defecate in the pool;
- (f) eat in the pool;
- (g) engage in any dangerous game or activity;
- (h) behave in a raucous manner;
- (i) remove, damage or deface any property or structure;
- (j) deposit or discharge anything that may cause a nuisance or pose a danger to health and safety or perform an act which is so liable;
- (k) make or light a fire for any purpose;
- (l) fight, argue or use indecent or offensive language;
- (m) smoke;

- (n) engage in any game or activity that may cause a nuisance, injury or discomfort to other patrons;
- (o) throw any object or projectile into the pool;
- (p) push or throw another individual into the pool;
- (q) use a diving board, platform or slide whilst another person is still on it;
- (r) wash any article of clothing in the pool;
- (s) act contrary to any sign erected at the pool;
- (t) mount, climb upon, sit upon, hang onto or in any way interfere with any building or structure unless it is designed for that purpose;
- (u) leave any object, parcel or thing unattended except in a locker designed for that purpose;
- (v) abandon, drop, spill, deposit, throw or in any other way disposes of any refuse or rubbish or other discarded or waste material or thing whether liquid or solid, except in a receptacle designed for the disposal thereof which is provided by or on behalf of the Municipality;
- (w) hold, convene or organise any entertainment, display, performance, procession, public meeting, recreation or event except with the prior written consent of the Municipality and in accordance with such conditions as may be imposed;
- (x) after using or after quitting any booth, loiter or remain without lawful cause or reasonable excuse in any passage leading to or from any booth;
- (y) enter or attempt to enter any booth which is already occupied by another person without the consent of such person or otherwise wilfully intrude upon the privacy of any other person using or occupying a booth;
- (z) enter into a pool whilst suffering from any cutaneous disease which is infectious or contagious;
- (aa) leave unattended any object or material on a bench or other seating accommodation provided by the Municipality for the use of the public;
- (bb) call for help when help is not needed or raise a false alarm or cause the same to be raised;
- (cc) beg for money or ask for other favours whether by word, posture, demeanour, or otherwise;
- (dd) gamble or play any game for gain, whether monetary or otherwise, and whether with cards, dice coin or instrument of chance or otherwise;

- (ee) enter a pool premises while under the influence of intoxicating liquor or a drug having a narcotic effect;
- (ff) ride a bicycle or use roller skates or a skate board or any similar device to which rollers or wheels are attached or cause or permit the same to be used except within an area expressly permitted by a notice displayed;
- (gg) perform acts on a diving board, platform or slide which are not consistent with its use for the purpose of diving or sliding;
- (hh) use any soap or similar detergent substance in the pool; or
- (ii) being a person above the age of twelve years enter upon or uses a slide.

### **CHAPTER 3 MISCELLANEOUS**

#### **Indemnity**

**48.** The hirer indemnifies and holds harmless the Municipality against and from any claims for damages or otherwise and costs, including costs as between attorney and client, that may be made against it by reason of any harm or loss suffered by any person during or associated with the use of the premises hired or the activities taking place in the hired premises during the period of the hire.

#### **Municipality not liable for loss or damage**

**49.(1)** The Municipality is not liable for any harm, damage or loss suffered by any person arising out of—

- (a) the use of any municipal premises or facility; or
- (b) any bona fide action or decision of an authorised official in terms of this By-law.

(2) The Municipality shall not be liable for any loss or damage suffered by the hirer in consequence of any accident, failure or defect of any equipment, fixtures or fittings.

### **Offences and penalties**

**50.**(1) A person is guilty of an offence if that person—

- (a) contravenes or fails to comply with any provisions of this By-law;
- (b) fails to comply with any notice issued or displayed in terms of this By-law;
- (c) fails to comply with any lawful instruction given in terms of this By-law; or
- (d) obstructs or hinders any authorised official, other official or representative of the Municipality in the execution of his or her duties under this By-law.

(2) A person is guilty of a continuing offence if he or she continues with an offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence.

(3) A person who is convicted of an offence under this section may be sentenced to a fine in the amount not exceeding R40 000 or to imprisonment for a period not exceeding two years or to both a fine and a period of imprisonment.

(4) In the case of a continuing offence, an additional fine of an amount not exceeding

### **Delegations**

**51.**(1) Subject to the Constitution and applicable national and provincial laws, any-

- (a) power, excluding a power referred to in section 160(2) of the Constitution;
- (b) function; or
- (c) duty,

conferred, in terms of this By-law, upon the Council, or on any of the Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) The delegation in terms of subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the Systems Act, subject to the criteria set out in section 50(2) of the said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the—

- (a) entity or person issuing the delegation or sub-delegation;
- (b) recipient of the delegation or sub-delegation; and
- (c) conditions attached to the delegation or sub-delegation.

### **Appeals**

**52.(1)** A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against the decision in terms of the Appeals provision contained the Systems Act by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority.

(3) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.

(5) The appeal authority must furnish written reasons for its decision on all appeal matters.

(6) All appeals lodged are done so in terms of the Systems Act and not in terms of this By-law.

(7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

### **Repeal of laws and savings**

**53.(1)** The laws mentioned in the first and second columns of the Schedule to this By-law are hereby repealed to the extent set out in the third column of the said Schedule.

(2) Any rights accrued or obligations incurred under any of the By-laws repealed in terms of subsection (1) remain in force as if those By-laws have not been repealed.

### **Short title and commencement**

**54.** This By-law is called the Municipal Premises and Facilities By-law, 2015, and takes effect on the date of publication thereof in the *Provincial Gazette*.

## **SCHEDULE LAWS REPEALED**

*(Section 53)*

<b><i>Number and year of law</i></b>	<b><i>Title</i></b>	<b><i>Extent of repeal</i></b>
Provincial Notice No. 426 of 1987 published in Provincial Gazette No. 4068 dated 22 October 1987	Borough of Amanzimtoti By-laws in relation to Permits in Respect of Council Owned Land	The whole
Provincial Notice No. 125 of 1986 published in Provincial Gazette No. 4518 dated 6 March 1986	Borough of Kingsburgh Hall By-laws	The Whole

Provincial Notice No. 210 of 1987 published in Provincial Gazette No. 4591 dated 2 July 1987	Borough of Amanzimtoti By-laws relating to the Hire and Use of the Town Hall and/.or Other Municipal Rooms	The Whole
Provincial Notice No. 584 of 1950 published in Provincial Gazette No. 2320 dated 23 November 1950	Township of Isipingo By-laws and Tariff Relating to the Hire of the Memorial Hall	The Whole
Provincial Notice No. 602 of 1978 published in Provincial Gazette No. 4081 dated 30 November 1978	Umbongintwini Health Committee Regulations Relating to the Hire and Use of Jubilee Hall	The Whole
Provincial Notice No. 26 of 1914 published in Provincial Gazette No. 215 dated 12 February 1914	City of Durban Miscellaneous By-laws	Sections 136, 136 bis, 137, 137 bis, 137 ter, 137 quat, 137 quin, 137 sept, 137 sext, 137 oct, 137 nov, 137 dec, 137 undec.
Provincial Notice No. 73 of 1988 published in Provincial Gazette No. 4629 dated 10 March 1988	Cato Ridge Health Committee Regulations Relating to the Hire of the Group Activities Room	The Whole
Provincial Notice No. 151 of 1978 published in Provincial Gazette No. 4037 dated 16 March 1978	Township of Hillcrest By-laws relating to the Hire of the Civic Hall	The Whole
Provincial Notice No. 173 of 1959 published in Provincial Gazette No. 2910 dated 16 April 1959	Borough of Kloof By-laws relating to the Hire and Use of the Kloof Town Hall and Group Activities Room	The Whole
Provincial Notice No. 383 of 1977 published in Provincial Gazette No. 3997 dated 28	Borough of New Germany By-laws relating to the Hire and Use of Properties owned	The Whole



July 1977	by the Council of New Germany	
Provincial Notice No. 448 of 1981 published in Provincial Gazette No. 4256 dated 27 August 1981	Borough of new Germany By-laws relating to the Hire of the Library Group Activities Room	The Whole
Provincial Notice No. 225 of 1981 published in Provincial Gazette No. 4239 dated 29 May 1981	Borough of Verulam By-laws relating to the Hire and Use of the Mountview Community Hall and the Verulam Public Hall	The Whole
Provincial Notice No. 238 of 1970 published in Provincial Gazette No. 3561 dated 28 May 1970	Borough of Westville By-laws relating to the Hire and Use of the Town Hall, the Indian Community Hall, Westville North Library and Community Centre and/or other Municipal Rooms	The Whole
Provincial Notice No. 462 of 1973 published in Provincial Gazette No. 3756 dated 30 August 1973	Yellowwood Health Committee Regulations relating to the Hire of the Civic Centre	The whole
Provincial notice no. 85 of 1989 published in Provincial Gazette No. 4683 dated 16 March, 1989.	EThekweni Municipality Pool By-law	The whole