

# MAKHADO MUNICIPALITY

## DRAFT MUNICIPAL FACILITIES : HIRING OF MUNICIPAL PREMISES AND AMENITIES BY-LAW

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#### **1. Interpretation**

In By-laws, unless the context otherwise indicates -

**“Activity”** means an undertaking, endeavour, project, enterprise or event of a similar nature;

**“Amenities”** means amenities under the administration and control of the Council and includes all appurtenances;

**“Appurtenance”** means any fitting, installation, appliance, equipment, device, instrument, apparatus, utensil, tool whatsoever in the premises;

**“Authorise official”** means an official to whom council has delegated or assigned power or functions;

**“Building”** means a building which contains a hall, auditorium, theatre, assembly room, amphitheatre, lecture room, concert hall, community centre or similar place of assembly, but does not include a sporting arena;

**“Council”** means the Makhado Municipal Council, or an authorised official;

**“Function”** means a reception, gathering, ceremony, occasion or event of a similar nature;

**“Hirer”** means a person who applies for, pays the prescribed fee, and obtains Council’s approval for the use of the amenities;

**“Person”** means a natural or juristic person, and includes a voluntary association of natural or juristic persons;

**“Premises”** means a land, a building or a structure or a portion of land, building or structure under control of the Council and on which an activity or function is undertaken, but does not include sporting grounds;

**“Prescribed fee”** means the fee prescribed in the Schedule to these by-laws.

## **2. Principals and objectives**

Council, as custodian of all buildings and premises under its administration and control, and fully aware of its duty to make all buildings and premises available to the use of the residents in the municipal area, thus supporting and enhancing any efforts by the members of the community to fulfil their aspirations towards social, cultural and religious association, adopts these by-laws which aim at making available and maintaining the buildings for use by the community.

## **3. Application of By-laws**

These by-laws apply to the hiring of any premises or amenities under the control of the Makhado Municipal Council.

## **4. Legislative framework**

These by-laws falls within the legislative framework of the -

- (a) Constitution of the Republic of South Africa, 1996 (Act No, 108 of 1996);
- (b) Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- (c) Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

- (d) Local Government: Municipal Finance Management Act, 2000 (Act No. 56 of 2003).

## **5. Application for Hiring**

- (1) A person who wishes to hire for use premises or amenities, must apply for the reservation thereof, and for these purposes must -
  - (a) complete the necessary application form and comply with all the other requirements and conditions which are specified in the application form;
  - (b) lodge two copies of the application form at the Municipal Manager's offices;
  - (c) obtain Council's approval before he or she makes use of the premises or amenities.
- (2) An application must be lodged not less than six weeks before the date on which the premises or amenities are required by the person.
- (3) The application must contain the following particulars:
  - (a) Particulars of the premises or amenities;
  - (b) The period for which the premises or amenities are required;
  - (c) The date and time when the premises or amenities will be vacated;
  - (d) The expected number of people who will be attending the proposed function or activity, and the number of seats to be used;
  - (e) The intended use of the premises or amenities;
  - (f) If food or soft drinks will be sold on the premises;
  - (g) An undertaking by the person who has lodged the application that he or she will comply with all conditions imposed by Council and with the provisions of these by-laws; and
  - (h) An indemnity form, as contemplated in subsection 9.
- (4) Council, when it considers the application, may have, in addition to other relevant factors, due regard to the following :
  - (a) that the premises or amenities may be used for lawful purposes only;
  - (b) that the use of the premises will not constitute a nuisance or annoyance to other users of the premises or amenities or to the occupiers of neighbouring premises; and

- (c) that the use of the premises will not constitute a danger to any person or property.
- (5) Council may approve the hiring of the premises or amenities subject to any condition it may deem expedient, or may refuse consent.
- (6) Council must, within seven days after the application form has been lodged, in writing notify the applicant if the application has been approved or refused, and -
  - (a) if the application is refused, Council must supply to the applicant the reasons why the application was refused; or
  - (b) if the application is approved, Council must forward a notice of approval and one set of the application form and other documents that were submitted, to the applicant, and must specify the notice of approval the conditions to which the hiring of the premises or amenities are subject.
- (7) Council must keep a register which is open to public inspection at all reasonable hours and which contains particulars of : -
  - (a) The application which was made to Council for the hiring of the premises or amenities;
  - (b) The name and address of the applicant;
  - (c) The date of the application;
  - (d) The prescribed fee, as stipulated in the Schedule to these by-laws, for the hiring of the premises or amenities;
  - (e) The decision of Council; and
  - (f) If the application was approved, the conditions relating to the use of the premises or amenities.
- (8) An applicant may not before Council's approval has been received by him or her, advertise or announce the function or activity for which he or she has lodged an application.
- (9) On application an applicant must complete and sign an indemnity form in favour of the Council and Council's service providers.

## **6. Cancellation, Postponement or Extension of Reservation**

- (1) A person who has lodged an application for the reservation of premises or amenities, may cancel the application, and the following apply: -
  - (a) If a reservation is cancelled 30 days or more before the date of the reservation, Council must fully refund the hirer with the fee already paid;
  - (b) If a reservation is cancelled less than 30 days but is 15 days or more before the date of the reservation, Council must refund the hirer with 50% of the fee already paid; and
  - (c) If a reservation is cancelled 14 days or less before the date of reservation, the hirer is not entitled to any refund of the fee already paid.
- (2) After approval has been given by Council, a person may apply for the postponement of the reservation to a later date.
- (3) Approval by Council of the postponement does not result in a penalty or forfeiture of any fees already paid.
- (4) Postponement may be refused if the premises or amenities have been reserved for the use by another person or Council.
- (5) A person may apply for an extension of the period of hire, and -
  - (a) the application for extension must be in writing and lodged at the Municipal Manager's offices;
  - (b) the provisions of subsection 5(2) (*Application for hire*) do not apply; and
  - (c) the premises or amenities must be available, in that Council has not reserved the premises or amenities for the use by another person.

## **7. Council's powers and duties**

Council, having regard to the principles and objectives of these by-laws :-

- (a) may, if practical, allow the hirer reasonable access to the premises or amenities before a function or activity commences to enable the hirer to make the necessary preparations for the function or activity;
- (b) may let any other part of the premises for simultaneous use to different hirer;

- (c) shall not render any services free of charge in connection with the hirer's function or activity;
- (d) shall not, before or during the function or activity, provide storage amenities for the storage of any object in connection with the hirer's function or activity;
- (e) may at all reasonable times enter the premises or amenities with the aim of –
  - (i) inspecting the premises or amenities;
  - (ii) ascertaining if the conditions of hire and the provisions of these by-laws are complied with;
  - (iii) maintaining, repairing, or improving the premises or amenities, and for these purposes Council may erect on or bring into the premises any structure or device, and the hirer has no claim to a reduction in fees;
- (f) may remove or direct to be removed from the premises or amenities a person who is intoxicated and whose behaviour is unseemly and causing a nuisance to other people on the premises or to people on or in neighbouring premises, or may instruct the hirer to prevent the entry into the premises of any<sup>7</sup> such person, and failure to abide by the direction or instruction constitutes an offence;
- (g) if an insurance premium is increased as a result of a contravention of subsection 8(20)(m)(*Duties of hirer*), may claim any additional premiums from the hirer, and the hirer must immediately reimburse the Council on receipt of the claim, and Council may, with the aim of covering any anticipated loss or damage which may result from a contravention of subsection 8(2)(m), require the hirer to take up insurance of the premises with an insurance company approved by Council;
- (h) shall decide on the nature of municipal services to be provided to the hirer; and
- (i) may authorise an official to attend a function or activity to ensure compliance with the provisions of these by-laws.

## **8. Duties of Hirer**

- (1) Before a hirer commences to use the premises or amenities, he or she must inspect the premises or amenities and all appurtenances, and should he or she find that the appurtenances are in a state of disrepair, he or she must immediately report the fact to Council, and failure to do so is deemed as an acceptance by the hirer that all the appurtenances are in a proper condition.
- (2) The hirer : -
  - (a) may not use the premises or amenities for any other purpose than that for which approval was given;
  - (b) may not use any premises or amenities for which approval was not given;
  - (c) may not use the premises or amenities unless he or she has fully paid the fees;
  - (d) may not sub-let the premises or amenities;
  - (e) may not allow another person to occupy the premises;
  - (f) may not without the approval of Council first having been obtained, cede, pledge or renounce in favour of another person any of the rights or obligations under these by-laws;
  - (g) may not remove any appurtenances or any other property of Council from the premises;
  - (h) may not drive or screw nails, screws or similar objects into the walls, doors or in any other place or into any object belonging to Council, on the premises;
  - (i) may not apply paint to any window or on any appurtenance or other object belonging to Council, on the premises;
  - (j) may not interfere or tamper with any electrical installation or appliance on the premises;
  - (k) must ensure that persons attending an function or activity for which purpose the hirer has hired the premises or amenities, behave in a seemly manner and does not cause a nuisance to other occupiers of the premises or amenities, or neighbouring premises;

- (l) if he or she has on his or her request been supplied, by Council, with table's and chairs for use during the function or activity, may not remove the equipment from the premises;
- (m) may not bring, allow or cause another person to bring onto, or may not keep or allow to be kept on, or may not undertake or allow any activity onto or on the premises or amenities any matter or thing which may invalidate or invalidates any insurance policy of the building or which may increase or increases the premium;
- (n) must, before vacating the premises or amenities, remove any article affixed or erected by him or her, such as, but not limited to flags, advertisements, posters, notices, signs and decorations;
- (o) should the function or activity requires the use of ushers, provide the ushers;
- (p) must control the admission of people to the premises or amenities, and, if applicable, the sale of tickets;
- (q) must ensure that at no time overcrowding takes place, and must adhere to the conditions, in the notice of approval, regarding the number of seats and persons allowed;
- (r) may not sell food or soft drinks on the premises or amenities without Council's approval, except if such activity forms an integral part of the function or activity;
- (s) ensure, at all times, that the premises or amenities are kept in a clean, sanitary and tidy condition;
- (t) must take the necessary precautions to keep drains, water installations, and sewage pipes clean and free of blockages, and must maintain these in such condition;
- (u) may not park or store or allow to be parked or stored any vehicle or object which may hamper the uninhibited access to or exit from an entrance, passage, and entrance hall;
- (v) may not allow the parking or vehicles anywhere else on the premises except than in the demarcated parking areas;
- (w) must comply with Council's fire protection regulations;



- (x) comply and ensure compliance by a person attending the function of activity, of any instruction issued by an authorised official of Council;
- (y) may not bring into or keep on the premises or amenities or affix onto anything in the premises or amenities any object which is unsafe or which, due to its weight or size, may damage the premises or amenities; and
- (z) may not bring onto or allow the bringing onto the premises by any person a fire-arm, knife, or any dangerous weapon of whatever kind.

## **9. Termination of Hire**

- (1) On termination of the hire the hirer and an authorised official of Council must, for the purpose of assessing the conditions of the premises or amenities, inspect the premises or amenities.
- (2) The hirer must :-
  - (a) return the premises or amenities to Council in the condition as when they were hired out to him or her;
  - (b) repair any damage or breakages;
  - (c) comply with any instructions by Council in respect of the cleaning of the premises or amenities; and
  - (d) vacate the premise or amenities within the period stated in the application form;  
and should the hirer fail to comply with –
    - (i) any of the provision of above (a), (b) or (c), Council may, replace, repair or make good any broken, missing or damaged appurtenances, appliances or any other object on the premises or amenities, and recover the costs from the deposit and balance from the hirer; and
    - (ii) any of the provision of above (d), Council may levy an additional fee for the period during which the hirer occupies the premises or amenities after the expiry of the period stipulated in the application form.
- (3) Council may cancel the hire of the premises or amenities under the following circumstances :-

- (a) The premises or amenities are substantially unusable due to :-
    - (i) destruction;
    - (ii) severe damage;
    - (iii) the absence of municipal services;
  - (b) the premises or amenities constitute a danger to human life or property; or
  - (c) should Council requires the premises or amenities for municipal purposes at the same time, however, Council may refund the fees that have already been paid to it in respect of the reservation.
- (4) Should Council decide to cancel a reservation, Council must, within a reasonable time notify, in writing, the hirer of its decision, however, in the instance where a notice is given in terms of paragraph (a), the notice is deemed to be effective as from the date on which the destruction or damage took place.
- (5) Subject to the provisions of paragraph (3)(c), a hirer has no claim against Council for loss of use of the premises or amenities or for damage arising from a cancellation in terms of subsection (3).
- (6) Council reserves the right to cancel a booking should the premises or amenities be required for municipal purposes at the same time, and Council is not liable to pay compensation to the hirer should it, for these purposes, cancel a booking, however, Council may refund the charges that have already been paid to it in respect of the application.

## **10. Limitation of Liability**

- (1) Council is not liable for : -
- (a) any theft, or loss or, or damage to any object whatsoever which the hirer or anyone else kept or deposited on the premises;
  - (b) any loss suffered by the hirer or anyone else arising from a failure or defect of amenities on the premises;
  - (c) any loss or damage suffered by, or shall not compensate the hirer or anyone else as a result of an interruption or insufficient supply of municipal services to the premises, or as a result of any activity by Council as contemplated in section 7(g)(iii) (*Powers of Council*); and

- (d) any consequential loss, arising from whatever cause, suffered by the hirer or anyone else who makes use of the premises or amenities.

## **11. Appeal**

- (1) A person whose rights are affected by a decision of an official may appeal against that decision 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 consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision;
- (3) When the appeal is against a decision taken by :-
  - (a) a staff member other than the Municipal Manager, the Municipal Manger is the appeal authority;
  - (b) the Municipal Manager, the Executive Committee is the appeal authority.
- (4) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable time.

## **12. Notice of contravention**

- (1) The Council may serve a notice of contravention on a person who has committed an offence in terms of these by-laws.
- (2) A notice of contravention must –
  - (a) specify at the time when the notice is issued, the name and residential and postal address, if either or both of these be known, of the person on whom the notice is served
  - (b) state the particulars of the contravention;
  - (c) specify the amount of the penalty payable in respect of that contravention and the place where the penalty may be paid; and
  - (d) inform the person that he or she may, within 28 calendar days of the date of service of the notice –
    - (i) pay the penalty;

- (ii) inform Council in writing that he or she elects to be tried in court on a charge of having committed an offence.
- (2) If a person elects to be tried in a court he or she must, within seven calendar days, notify the Council of his or her intention.

### **13. 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 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 Council as result of such contravention or failure.

### **14. Revocation of by-laws**

The Standard By-laws relating to Hiring of Municipal Premises and Amenities are hereby repealed.

**SCHEDULE**  
(section 5(7)(d))

Tariff of fees for hiring of :

Municipal Hall \_\_\_\_\_ R\_\_\_\_\_ per day or part hereof

LIST OF PLACES FOR HIRE