

LOCAL GOVERNMENT NOTICE

EMALAHLENI LOCAL MUNICIPALITY

The Municipal Manager hereby publishes, in terms of section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] read with section 162 of the Constitution of the Republic of South Africa Act, 1996 [Act No. 108 of 1996] the by-laws relating to Heritage Resources that come into operation on the date of publication thereof in the Provincial Gazette.

BY-LAWS RELATING TO HERITAGE RESOURCES

PREAMBLE

WHEREAS the National Heritage Resources Act, 1999 [No. 25 of 1999] empowers local authorities, with conditions, to formulate by-laws for managing local heritage resources, or other higher order heritage resources where a responsibility may be delegated.

AND WHEREAS the Council of the Municipality, acting within the framework of the principles, and striving to realize the objectives expressed in the National Heritage Resources Act, hereby adopts these by-laws to protect, manage and control those sites and objects of the national estate, as set out in section 3 thereof, entrusted to it under section 26 (1) (f) of the said Act.

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SCHEDULES

[1] Interpretation

In these by-laws, unless the context indicates otherwise –

“Heritage facility” means a heritage site as defined in section 1 of the National Heritage Resources Act, 1999 (Act No.25 of 1999);

"Municipality" means the Emalahleni Municipality, established in terms of section [12] of the Local Government: Municipal Structures Act, 1998 [Act No. 117 of 1998] and includes any political structure, political office bearer, duly authorized agent thereof or any employee thereof acting in connection with these by-laws by virtue of a power vested in the Municipality and delegated to such political structure, political office bearer, agent or employee;

“Official” means a person appointed in accordance with the provisions of section 14 of this bylaw;

“The Act” means the National Heritage Resources Act, 1999 [Act No.25 of 1999].

[2] Application

These by-laws apply to those heritage resources, heritage sites and heritage objects to which powers and functions of a heritage resource to which powers and functions of a heritage resources authority were delegated in terms of section 26(1)(f) of the Act in respect of such Grades as contemplated in section 7, within the Emalahleni municipal area.

[3] Powers and functions of theMunicipality

The Municipality has:

- [1]** all such powers and functions of a heritage resources authority as delegated to it in terms of section 26 (1) (f) of the Act in respect of such Grades as contemplated in section 7 of the Act, and such responsibilities and competence as contemplated in section 8 of the Act; and
- [2]** Such rights and duties as contemplated in section 9 of the Act, and hereby acts in accordance with the provisions of section 54 of the Act.

[4] Compilation of an inventory of heritage resources

- [1]** In compliance with Section 30(5) of the Act, the Municipality must, within six months of the promulgation of this bylaw, adopt an inventory of heritage resources which fall within its area of jurisdiction and submit the inventory to Eastern Cape Provincial Heritage Resources Council.
- [2]** If Eastern Cape Provincial Heritage Resources Council includes the heritage resources listed in the inventory in the Provincial Heritage Register, upon its listing each heritage resource will become subject to the controls set out in Section 30(1) of that Act.

[5] Designation and management of heritage areas

- [1]** The Municipality may by notice in the Provincial Gazette, designate any area or land to be a heritage area on the grounds of its environmental and cultural interest, or by the presence of heritage resources subject to consultation with the Provincial Heritage Authority and the relevant property owners.
- [2]** No person may alter or demolish any structure or part of a structure which is older than 60 years without a permit issued by the relevant provincial heritage resources authority.

[6] Protection of heritage resources

The Municipality must provide for the protection of heritage areas through its zoning scheme/by-laws, and may make by-laws regulating access, use, protection, management, incentives and fines for resources protected under the Act.

[7] Admission to heritage facility

- [1] A heritage facility is open to the public at the times, dates and subject to such conditions regarding the entry to and activities that may be undertaken upon the heritage and cultural facility, as determined by the Council of a the Municipality by resolution in respect of different heritage facilities, including conditions regarding the driving of a motor vehicle and different classes of motor vehicles in heritage sites.
- [2] The Municipal Manager may from time to time grant to any person or person, during such hours and for such period as he or she may deem fit, the exclusive use of a heritage facility.
- [3] The heritage authority or the Council of the Municipality may by resolution for reasons of maintenance, development, security, safety or public healthy, temporarily or permanently:
- [a] Close a heritage facility or a portion thereof; or
 - [b] Suspend all or any activities thereon.
- [4] Where a person in a heritage facility has committed an offence in terms of these by-laws or any other law, an official may order such person to leave the heritage facility, and a person so ordered to leave:
- [a] Must forthwith leave the heritage facility by the shortest route available to the public;
 - [b] May not enter any heritage facility during the period of six months immediately succeeding the relevant order, unless:
 - [i] the Municipal Manager has authorized him or her thereto in writing; or
 - [ii] He or she has not, within three months of being so ordered, been prosecuted and found guilty of an offence contemplated above.
- [5] Where an official on reasonable grounds suspects that a person wishing to enter a heritage facility intends to commit an offence in terms of these by-laws or any other law in or at the heritage facility, he or she may refuse entry to such person.
- [6] A person who fails to obey an order issued in terms of subsection (4) commits an offence.

[8] Entrance fees

- [1] The Municipal Council may by resolution levy different entrance fees and issue entrance tickets in respect of person or different classes of vehicles, which entitle such person, groups or vehicles (the "ticket holder") to enter upon a heritage and cultural facility and grants concessions in respect of entrance fees payable.
- [2] An entrance fee is payable at the entrance to a heritage and cultural facility and for each person, group or vehicle as contemplated in subsection (1).
- [3] An entrance ticket contemplated in subsection (1) is valid for the period, as contemplated in subsection (4) in respect of which an entrance fee has been paid.
- [4] An entrance fee contemplated in subsection (1) is payable in respect of each day or portion thereof during which a person, group or vehicle is or remains in

heritage and cultural facility, provided that no fee is payable in respect of the day on which such heritage and cultural facility is left, heritage and cultural facility is left before 10:00 of such day and such day is not the day of arrivals in such heritage and cultural facility.

[5] No fee contemplated in subsection (1) is payable, however, where the whole or any portion of the period in respect of which such fee has been paid has not been or cannot be utilized, the fee which has been paid in respect of each full day which has not been utilized may, with the approval of the Municipal manager, be repaid, and for the purposes of this subsection “full day” means a period of 24 hours commencing at 10:00 of any day.

[6] An official may require any person in a heritage and cultural facility to produce forthwith to such official the entrance ticket issued to the person in terms of subsection (1), and a person who fails to produce such entrance ticket or person who enters a heritage and cultural facility without having paid the entrance fee as contemplated in subsection (1) commits an offence.

[9] Consent required for certain activities

[1] No person may, without the written consent of the Municipal Manager first having been obtained at, in or upon a heritage and cultural facility:

[a] Arrange, hold present or attend—

[i] A public entertainment;

[ii] A meeting;

[iii] a public gathering or procession, exhibition or performance; or

[iv] An auction;

[b] From the general public, collect money or any other goods for charity or any other purpose;

[c] Display or distribute a pamphlet, placards, painting, book, handbill or a painted, written or painted work;

[d] Conduct any trade, occupation or business;

[e] Display, sell or rent out present for sale or rent any wares or articles;

[f] Tell fortunes for compensation;

[g] Play any musical instruments or sign;

[h] Have in his or her possession a firearm, air pistol, bow, knife, slingshot, or fireworks; or

[i] In any manner disturb such heritage and cultural facility.

[2] No person may, without the written consent of the Municipal Manager first having been obtained bring into a heritage and cultural facility an alcoholic beverage, and a person who has obtained such consent may consume such beverage, at a designated area set aside for this purpose only.

[3] No person may, without the written consent of the Municipal Manager first having been obtained cook, prepare or sell, in a heritage and cultural facility, food of any kind, and a person who has obtained such consent may cook, prepare or sell such food at a designated area set aside for this cook, purposed only must ensure that the preparation and cooking of food is done in a clean and sanitary manner so as not give rise to excessive smoke or other nuisance or entail any danger to health.

[4] No person may, without the written consent of the Municipal Unit Manager having been obtained kindle a fire in a heritage and cultural facility, except for the purpose of barbecuing food, and a person who has obtained such consent such fire at a designated area set aside for this purpose only may not leave any fire which he or

she has kindle or used without completelyextinguishing the fire or the embers thereof.

[5] No person may, without the written consent of the Municipal Manager first having beenobtained erect or establish in or on a heritage and cultural facility any fence, structure, dam, shelter or anything else and a person and a person who has obtained such consent erect suchfence, structure, dam, shelter or anything else, park such or pitch such tent at a designatedarea set aside for this purpose only.

[6] No person may, without the written consent of the Municipal Manager first having beenobtained bring into, have in his or her possession in a cultural facility a firearm.

[7] A person who wishes to obtain the consent of the Municipal Manager contemplated insubsection (1) and (2), must complete and submit to the Municipal Managera form similar to the form in Schedule 1, and the Municipal Manager mayrefuse consent, or grant consent, which consent will be indicated on the said form, subject toany such conditions as he or she deems necessary and subject to the prescribed fee ascontemplated in section 8 having been paid, and a person who wishes to sell food must, inaddition to the provisions of any and applicable by-laws in force in the Emalahleni municipalarea relating to-

[a] The licensing and control of undertakings that sell food to the public; or

[b] The hawing of food by street traders or pedlars.

[8] A person who has been granted consent in terms of subsection (7) must at all times whenundertaking an activity for which consent has been granted, keep the form in his or herpossession, and must forthwith produce the form on request of an official.

[9] A person who contravenes a provision of subsection (1) to (6) or (8) commits an offence.

[10] Permit

[1] Despite the provisions of section 6, 7, and 8, the Municipal Manager may, on writtenapplicationsubmitted to him or her in a form similar to the form in Schedule 2, which schedule refers, and subject to any such conditions as he or she may deem necessary to be imposed, issue a permit in a form similar to the form in Schedule 2, free of charge-

[a] To a group of people, such as, but not limited to,a group of bona fide students; or

[b] To a person who is undertaking scientific, educational or similar research.

[2] The holder of a permit issued in terms of subsection (1) or section 48 of the NationalHeritage Resources Actmust, on arrival at the heritage facility concerned, display such permit to the control official, and a person who fails to do so, commits an offence.

[3] The holder of a permit who undertakes an activity in contravention of a condition imposedon him or her commits an offence.

[11] Appeal

[1] A person whose rights are affected by a decision of an official of the Municipality acting in terms of this bylaw 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 appeal authority contemplated in subsection (3) 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 Manager is the appeal authority;
 - [b] the Municipal Manager, the Executive Mayor is the appeal authority; or
 - [c] a political structure or political officer bearer, or a Councillor, the Council is the appeal authority.
- [4] The appeal authority must commence with an appeal within six weeks of receipt of the notice of appeal and decide the appeal within a reasonable time.

[12] Formal protection of privately owned heritage sites

- [1] In the instance where a heritage sites has not been put under the control of the Municipality in terms of the Act, the Municipality may formally protect the site in a manner contemplated in part 1 of Chapter II of the Act, and may, with the consent of the owner of the site, make regulations with the aim of –
 - [a] safeguarding the site from destruction, damage, disfigurement, excavation or alteration;
 - [b] regulating the use of the site;
 - [c] imposing conditions for any development of the site; and
 - [d] regulating the admission of members of the public to site, and the fees payable for such admission.
- [2] The Council may, by agreement with the owner of heritage site:
 - [a] conserve or improve the site;
 - [b] construct fences, walls or gates around or on the site;
 - [c] acquire or construct and maintain an access road to the site over any land, and construct upon such land fences, walls or gates;
 - [d] erect signs on the near the site; or
 - [e] obtain all reproduction rights either in two or three dimensions.

[13] Protection and management of protected areas, heritage areas and heritage objects

- [1] The Municipality must make provision in its planning scheme to provide for the protection and management, and in these by-laws provide for the protection and management of:
 - [a] a protected area, in accordance with section 28(5) and (6) of the Act;
 - [b] a heritage resource listed in terms of section 30(3) of the Act and subject to the provisions of said section;
 - [c] a heritage area designated in terms of section 31(5) of the Act; and
 - [d] heritage objects as contemplated in section 32 of the Act.

- [2] The Municipality shall protect and manage the areas, resources and objects contemplated in subsection (1) in accordance with the provisions of Chapter II of the Act, and may for these purposes enter into any heritage agreement contemplated in the said Chapter, or issue any permit contemplated in Chapter III of the Act, and may provisionally protect a heritage resource in accordance with the provisions of section 31 of the Act

[14] Enforcement officials

- [1] The Municipality must within its powers contemplated in section 3(1) of this bylaw appoint an official as Heritage Inspector as contemplated in section 50 of the Act, and such official has such powers, duties and functions as delegated to it in terms of the said section to implement and manage the provisions of these by-laws and such official has such powers, duties and functions as delegated to him or her by the Council, and a person commits an offence if he or she:
- [a] assaults, resists, obstructs, hinders, delays or interferes with an official in the exercise of his or her powers or the performance of his or her duties or functions or in any other way attempt to prevent the exercise of such powers or the performance of such duties or functions;
 - [b] offers any inducement to an official or makes any threat, whether of violence or otherwise, in relation to such official or a member of his or her family or a person dependent on him or her or her property in order to persuade or prevent such official from exercising any of his or her powers or performing any of his or her duties or functions;
 - [c] not being an official, by words, conduct or demeanour pretends that he or she is an official; or
 - [d] not being an official, wears a uniform or part of uniform or an insignia designed and intended for use by an official of the Emalahleni Municipality, or an imitation of such uniform or insignia.

[16] Penalties

A person who has committed an offence in terms of these by-laws is, on conviction, and subject to penalties prescribed in any other law, liable to a fine, or in default of payment, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of fine, or to both such fine and such imprisonment and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment for period not exceeding one month.

[17] Repeal of by-laws

Any by-laws relating to heritage resources adopted by the Municipality or any erstwhile municipal council now comprising an administrative unit of the Municipality will be repealed from the date of promulgation of this bylaw.

[18] Short title

This by-law is called the Heritage Resources by-law.

SCHEDULE 1
[Section 9(7)]

APPLICATION FOR CONSENT TO UNDERTAKE CERTAIN ACTIVITIES

..... (full name of applicant)

Hereby applies in terms of the Heritage Resources bylaw, for consent to undertake at
.....
(description of heritage facility)
For the purpose of
.....
(give the reason why you wish to undertake the activity)

The activity of

.....
(full description of activity)
Date.....
Signed..... (for applicant)
.....
.....
.....
.....
(address of applicant)

CONSENT

Above-mentioned person is hereby granted consent to undertake the activity as specified subject to the following conditions:

CONDITIONS

.....
.....
.....

Name of authorised official.....

Date.....

SCHEDULE 2 (Section 10(1))

APPLICATION FOR PERMIT

..... (full name of applicant)

Hereby apply, in terms of the Heritage Resources by-laws, for a permit to undertake at
.....
(description of heritage facility)
For the purpose of
.....
(give the reason why you wish to undertake the activity)

The activity

.....

(full description of activity such as the species and number or mass of the fauna or flora or the name or description of anything else and the number thereof in respect of which the permit is granted)

During

.....

(specify the date and time)

Date.....

Signed..... (for applicant)

.....

.....

.....

.....

(address of applicant)

PERMIT

Above-mentioned person is hereby granted a permit to undertake the activity as specified in the specified public amenity.

CONDITIONS

.....

.....

.....

(specify in the activities which the permit holder is allowed to undertake)

Name of Official.....

Rank.....

Date.....

SCHEDULE 3 (Section 9)

FEES

1. Entrance fees:
(name of facility) RXX,xx per person