

# BYLAWS FOR THE HIRE AND USE OF COMMUNITY, ARTS AND CULTURAL FACILITIES FOR NYANDENI MUNICIPALITY

## 1. DEFINITIONS

In this By-laws, unless context otherwise indicates-

**arts+** means all forms and traditions of dance, drama, music, music theatre, visual arts, crafts, design, written and oral literature, film video, traditional and community art, all of which serve as means for individual and collective creativity and expression through performance, execution; presentation, exhibition, transmission and study;

**artist+** means anyone who is involved in the creation or production of music, dance, theatre, crafts, films, video, traditional and community art, musical theatre and literature;

**appurtenance,+** means any installation or appliance in the premises and includes, without derogating from the generality of the foregoing, any keys, locks, windows, sewerage pans, basins, water taps and fittings and **appurtenances+** has a corresponding meaning;

**authorized official+** means an official of the Council to whom powers and/or functions have been delegated or assigned;

**centre+** means a building owned or operated by the Council, whether incorporating a community hall or not, at which group activities of an indoor sporting, cultural or recreational nature can be pursued.

**Council+** means the Nyandeni Municipality and its successors in law, and includes the Council of that municipality or its Executive Committee or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any officer to whom the Council has delegated any powers and duties with regard to these bylaws;

**culture+** means the dynamic totality of distinctive, spiritual, material, intellectual and emotional features which characterize a society or a social group and includes language and heritage conversation (including museums, archives, libraries, historical sites and monuments);

**cultural activity+** means any cultural function, cultural meeting, festival, flea market, exhibition or any other cultural activity;

**facilities+** means the arts and culture facilities under the administration and control of the Council and included all appurtenances;

**group activity+** means an activity of function of an artistic, cultural or indoor sporting nature in which several members of a group of persons having interest in the nature of the activity participate either together or in sub-groups, or serially, whether as individuals or in teams;

**hirer+** means any person who applies, pays and obtains approval for the use of the facilities;

**person+** means a natural or juristic person and vice versa and includes a voluntary association of natural and/or juristic persons;

**premises+** means land, building or structure or any portion of land, building or structure on or in which the arts and cultural activities regulated by these By-laws are carried out or on which a centre had been constructed;

**prescribed fee+** bears the same meaning as that set out in section 1 of these By-laws;

**property+** means the property on which the premises or buildings of the Council are situated;

## 2. RIGHTS AND STATUS OF ARTISTS

The Council must recognize the right of all artists to practice their respective forms of art and enjoy their right to freedom of expression through such medium, consistently with the application of any other relevant law.

### **3. CO-OPERATION BETWEEN COUNCIL DEPARTMENTS**

Every Department of the Council having jurisdiction over or responsibility for any multi-purpose community facility must cooperate with any other such Department in ensuring that-

- (a) such centre is properly maintained in a state fit for the purposes for which it was designed and is used; and
- (b) no part of such centre is made available to or hired out to more than one person at the same time.

### **4. APPLICATION FOR HIRING OF FACILITIES**

- (1) Any person wishing to apply for the hiring of facilities must-
  - (a) submit an application in the form prescribed by the Council for the purpose;
  - (b) submit an application to the Council and must stipulate the facilities, seating, accommodation and equipment required and the period for which the premises and such other facilities as are referred to in this paragraph are required;
  - (c) ensure that such application form is received by the Council not less than two weeks prior to the date on which the premises and facilities are first required by the applicant.
- (2) the Council may refuse to hire out any premises or facilities in terms of subsection (1), or to cancel any booking thereof if-
  - (a) the premises or facilities are to be used for any unlawful purposes; or
  - (b) the premises or facilities being applied for are required by the Council for municipal purposes at the same time.
- (3) No compensation is payable by the Council to the hirer for any loss which the hirer may suffer by reason of the Council having acted in terms of subsection (2): Provided that the Council may in its discretion refund all the charges that have already been paid to it in respect of the application.
- (4) The hirer is limited to the use of the facilities specified in the application form and may not use any other facilities for which he or she had not applied.
- (5) The facilities and accommodation so hired may not, except with the prior written approval of the Council, be used for any purpose other than the purposes indicated on the application form.
- (6) No premises or facilities hired out by the Council may be used for the purpose of conducting any form of religious worship, unless the express written consent of the Council to such use has been given in writing; provided that-
  - (a) such use may be made of the premises only at the times specified in the contract of hire or letter of approval; and
  - (b) the Council is entitled to refuse its approval unless it is satisfied that such use will not, by reason of singing, chanting, acclamation or other form of noise-producing worship will not constitute an undue interference with the amenities normally enjoyed by other occupants of the building or occupants of neighbouring buildings.

### **5. TARRIF OF FEES**

The Council may from time to time determine a tariff of prescribed fees for the services and facilities provided by the Council in terms of these By-laws.

### **6. PAYMENT OF CHARGES**

No person is permitted to use any premises or facilities unless the prescribed fee has been fully paid. The Council may exempt any person or organization, on good cause, from the payment of portion or all the prescribed fee.

**7. PERIOD OF TIME**

Notwithstanding any determination made by the Council regarding the dates and/or period for which the premises and/or facilities may be hired, the Council may allow the hirer reasonable access to the facilities before the commencement date of the period of hire, so as to enable the hirer to make the necessary preparations and arrangements in the premises.

**8. ADJUSTMENT OF PERIOD OF HIRE**

- (1) Any person who makes an application for the use of premises and/or facilities in terms of the provisions of section 4 may, subsequent to the approval of such application and the reservation of such premises, apply for the postponement of such reservation to a later date, without penalty or forfeiture. The Council reserves the right to refuse such a postponement if the premises and/or facilities have in the meantime been reserved for use by another or others on the dates to which the postponement is sought.
- (2) Any person who has already made an application for reservation of premises or facilities may cancel such reservation. However, if-
  - (a) a reservation is cancelled one month or longer prior to the commencement date of such reservation the hirer must receive a full refund of the prescribed fee already paid;
  - (b) a reservation is cancelled for more that 15 days but less than one month prior to the commencement date of such reservation, the hirer must receive a 50% refund of the prescribed fee;
  - (c) a reservation is cancelled 1 day or less prior to the commencement date of such reservation, the hirer is not entitled to receive any refund of the prescribed fee.
- (3) Any person may extend the period of hire of premises and/or facilities upon written application to the Council, provided that the premises and/or facilities concerned have not in the meantime been reserved for use by any other person or persons.

**9. JOINT HIRE**

- (1) The council may let any premises or parts thereof to different hirers for simultaneous use and in such a case, each hirer must use all the ancillary facilities which serve the different parts of the premises in common jointly with the other users and in such manner that all the different hirers, their guests, consumers and patrons, are able to enjoy the use of the facilities without infringing on the rights of use by others.
- (2) The provisions of these By-laws, read with the necessary changes, apply to the joint users of the hired premises.

**10. SUB-LETTING**

The hirer may not sub-let any of the hired premises or facilities to any person or organization nor may the hirer cede, pledge or renounce in favour of another person any of his rights or obligations under these By-laws nor allow any other person to occupy the premises without the Prior written consent of the Council.

**11. CONDITION OF PREMISES**

- (1) The hirer must inspect the hired facilities, including all installations, appliances, fittings, accessories and furniture before he commences to use the same installations, appliances, fittings, accessories and furniture and if the hirer finds that any of the installations, appliances, fittings, accessories and furniture on the premises are not in a proper state of repair, the hirer must report this fact to the Council.
- (2) If the hirer fails either to inspect the facilities in terms of subsection (1), or to report any other defects found, it may be deemed that upon commencement of occupation by the hirer, everything in the premises was in a proper state of repair.

## **12. DUTIES OF THE HIRER**

Every person hiring premises from the Council must-

- (a) take all reasonable steps to keep all sewerage pipes, water taps and drains within or serving the premises free from obstruction or blockage as a result of the hirer's activities;
- (b) at all times keep the premises in a clean, tidy and sanitary condition;
- (c) not affix or attach to the premises any notices or other matter without the prior consent of the Council: Provided that upon the termination of the hire, the hirer must remove all such attachments;
- (d) not obscure any plate glass windows by painting or otherwise;
- (e) not drive into the walls or partitions or doors of the premises any screws or nails;
- (f) not change or interfere with or overload any electrical installation in the premises;
- (g) not remove or take out from the premises any furniture or other articles whatsoever belonging to Council;
- (h) not obstruct or interfere or tamper with any thermostats or air conditioning appliances in the premises or building in which the premises are located.
- (i) not introduce or install any unsafe or heavy article, furniture, fitting, appliance or equipment which in the opinion of an authorized official could damage the premises or any part thereof: Provided further that an authorized official may impose on the introduction of such item, such conditions as are reasonable to ensure the safety of the premises and persons using them.
- (j) not install in the premises any air conditioning or ventilating units or equipment without the Council's prior consent;
- (k) not permit the storage of motor vehicles or other movable items of any description on the pavements outside or the entrance halls, staircases or passages of the premises;
- (l) not do anything on the premises, nor allow anything to be done in the non-compliance with any reasonable instruction or prohibition given or issued by any authorized official;
- (m) not park vehicles nor allow the parking of vehicles by the hirer's employees, invitees, agents, directors or other representatives anywhere on the premises except in the properly demarcated parking bays on the premises as pointed out by an authorized official.

## **13. DAMAGE TO PROPERTY**

A hirer who fails to keep and maintain the premises and facilities hired out to him or her and to return them to the Council in the same order and condition as when they were hired out to him or her is, in addition to any remedies available to the Council at common law, guilty of an offence and liable to the penalties specified in these By-laws.

## **14. ADVERTISEMENTS AND DECORATIONS**

- (1) No person who has applied for the hire of premises and/or facilities may publicly announce or advertise any function or event in respect of which an application for the hire of such premises and/or facilities in terms of these By-laws has been made before the Council has notified such person in writing that the application has been approved.
- (2) Every hirer must, before vacating the hired premises on the termination of the period of hire for any reason whatsoever, remove all posters, notices, decorations, flags, emblems, signs and other forms of advertisement or direction erected or affixed by him or her, and make good any damage caused by such removal.

**15. ADMISSIONS AND SALE OF TICKETS**

The hirer is responsible for all arrangements in connection with the admission of the members of the public to any cultural or other activities on the premises; and the provision of ushers and other persons necessary to control the admission of persons to the premises, and the sale of tickets.

**16. OVERCROWDING**

- (1) No overcrowding of the premises or facilities may be allowed at any time during any of the hirer's cultural activities and the hirer must comply with the Council's requirements prescribing the maximum number of persons allowed on the facilities during cultural activities,
- (2) Without detracting from the general requirements referred to in subsection (1), the hirer may not allow more persons admission to the premises than the number of available seats or, where seating is not provided, the maximum number of persons prescribed by notice on the premises or as stipulated in the contract of hire.

**17. SALE OF REFRESHMENTS**

- (1) No person may sell food or soft drinks on or in any hired premises during any activities for which they have been hired, without the prior written consent of the Council.
- (2) The Council may permit the sale of refreshments of foodstuffs by such persons as it may approve after it has received written application to sell such items, and the Council may allocate sufficient accommodation to such approved persons, wherein trading stock, furniture, equipment, installations and books necessary required for that purpose may be accommodated.
- (3) The provisions of subsections (1) and (2) do not apply where the supply and sale of refreshments of foodstuffs is an integral part of the cultural activities of the hirer.
- (4) The provisions of sections 40(1) and (2), read with the necessary changes, apply with regard to any loss, theft or damage suffered by the hirer or any other person in respect of the items referred to in subsection (2).

**18. SERVICES**

- (1) The nature of the municipal services to be provided to the facilities by the Council or its employees, authorized representatives of the Council or a service provider is at the sole discretion of the Council.
- (2) Neither the Council nor its employees or authorized representatives of service providers are liable for the non-receipt or non-delivery of goods, postal matter or correspondence belonging to the hirer, nor are they liable for anything which the hirer, his or her employees, invitees, agents, directors or representatives may have deposited or left in the premises or any part thereof.
- (3) The Council may take such steps as it may consider necessary in its discretion for the proper maintenance and operation of any common areas in the premises.
- (4) An authorized representative of the Council may attend the hirer's function to ensure compliance with any provision of these By-laws.
- (5) The hirer is not entitled to the official services of any authorized official or other representative of the Council who attends the hirer's function in terms of subsection (4).
- (6) The hirer is not entitled to receive gratuitous cleaning or other services from the Council in connection with the hirer's activities during the preparation of a function or during a function.

## **19. EXCLUSION OF LIABILITY**

- (1) The Council, its employees, and service providers are not liable for -
  - (a) any damage or loss sustained by any person as a result of an insufficient supply or interruption in the supply of municipal services to the premises, or due to any act or omission on the part of the Council, its employees authorized officials or representatives or service providers if the Council considers the interruption necessary to enable it to exercise any of its rights or carry out its obligations under these By-laws or under any other law;
  - (b) any loss, theft or damage caused to the stock-in-trade, furniture, equipment, installations, books, papers, clothing or other articles of any nature whatsoever kept in the hired premises by the hirer or anyone else whether in regard to the hirer's business or not;
  - (c) any consequential loss suffered by the hirer or anyone by making use of the facilities on the hired premises or as a result of rain, hail, lightning, wind, fire, storms, riot or civil commotion or for loss of life or injury to the hirer or anyone else on or in the premises;
  - (d) any loss suffered by the hirer or anyone else as a result of any failure or defect of any of the facilities on the hired premises: Provided such failure or defect is not attributable to any willful act or omission on the part of the Council,
- (2) Every hirer must, at the time of concluding a contract of hire for the premises and/or facilities applied for, complete and sign an indemnity in a form required by the Council in favour of the Council, its employees and service providers.

## **20. DESTRUCTION OF PREMISES**

- (1) The Council may cancel the hire of facilities if -
  - (a) the facilities are destroyed or are damaged to such an extent as to be substantially unusable; or
  - (b) there is damage to the facilities such that, although subsection (1)(a) does not apply, the premises have been rendered substantially unusable because of absence of access or supply of any necessary municipal service or amenity; or
  - (c) there is destruction or damage to the premises or parts thereof to neighbouring buildings, whether or not the hired premises are involved and the Council decides not to proceed with the hire of the premises in order to engage in reconstruction, renovation or rebuilding or for safety reasons.
- (2) Any decision made in terms of subsection (1) must be communicated by written notice given by the Council to the hirer within a reasonable period of the taking place of the event referred to in subsection (1)(a) giving rise to the cancellation; provided that in the case of notice given in terms of subsection (1)(b) and (c), such notice shall be deemed to be effective as from the date on which the damage or destruction, as the case may be, took place.
- (3) No hirer has any claim against the Council, its employees or authorized representatives or service providers arising out of the damage to or destruction of the premises or any part thereof or for the resultant loss of beneficial use of the premises by such hirer.

## **21. TERMINATION FOR NON-COMPLIANCE**

The Council may at any time cancel the hire of the facilities if the hirer fails to comply with any of the provisions of these By-laws and the Council is not liable for any damage or loss sustained by any person as a result of such cancellation. In the event of such a cancellation, the Council is not precluded from exercising any rights or claims which the Council may have against the hirer under any provision of these By-laws or at common law.

## **22. TERMINATION OF HIRE**

- (1) Upon the termination of the period of hire for any reason. The hirer must return the premises and the facilities to the Council in good order and condition and must make good and repair at his or her own cost on demand any damage or breakages or, in the alternative, reimburse the Council for the cost of replacing, repairing or making good any broken, damaged or missing articles.
- (2) Every hirer must vacate the hired premises within such period after expiry of the period of hire as is stated on the application form or contract of hire. If the hirer fails to comply with the provisions of this subsection, the Council shall be entitled to levy a further prescribed fee for such additional period during which the hirer remains in occupation of the premises after the expiry of the period of hire. The provisions of this subsection do not preclude the Council from taking lawful steps to procure the eviction of any such hirer from the premises.
- (3) Every hirer must comply with all reasonable and lawful instructions of the Council in respect of the cleaning of the facilities upon the hirer's vacation of the premises.
- (4) Every hirer must comply with all reasonable and lawful instructions of the Council in respect of the vacation of the premises and the return of the facilities.

## **23. FIRE HAZARDS AND INSURANCE**

- (1) A hirer may not at any time bring or allow to be brought or kept on the premises, nor undertake nor permit to be done or undertaken in the premises, any matter, thing or activity whereby the fire or any other insurance policy of the building concerned may become or becomes void or voidable or whereby the premium for any such insurance may be or be increased.
- (2) If the premiums for such insurance are increased as a result of any act or omission contemplated in subsection (1), the Council may, in its discretion, allow such activity 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 Council or the insurance company to the effect that such additional premiums have been charged.
- (3) The Council may at any time at its discretion require the hirer to take up insurance of the premises hired with an insurance company approved by the Council, against loss or damage by fire or any other cause during or as a result of any function for which the facilities are hired.

## **24. STORAGE FACILITIES**

The Council is not responsible for providing facilities for the storage of the equipment of the hirer, or the hirer's employees, visitors, supporters or agents during any period prior to, during or after a cultural activity.

## **25. EQUIPMENT**

A hirer who requires the Council to supply any equipment for use during a function, may use such equipment only with the permission of the Council and under the supervision of an authorized official. If the hirer causes damage to the equipment or removes or causes the equipment to be removed from the premises without permission or, having removed it with permission, fails to return it, the hirer is liable for the repair or replacement costs thereof.

## **26. RIGHT OF ENTRY**

- (1) Subject to the provisions of applicable national and provincial legislation, the Council or the authorized representative of the Council or a service provider may enter the premises at all reasonable times -
  - (a) to inspect the premises and carry out any repairs or alterations or additions or modifications or improvements on or to the facilities or the premises.
  - (b) In order to ensure that the conditions of hire of the premises and the provisions of these By-laws are being complied with.

- (2) A hirer has no claim for remission of any charges payable for the hire of the facilities, compensation, damages or otherwise in connection with the exercise by the Council of the rights under subsection (1).
- (3) The Council, the authorized representative of the Council or a service provider is entitled to erect scaffolding, hoardings and building equipment in, at, near or in front of the premises as well as such other devices required by law or which the Council's architects may certify is necessary to carry out the repairs contemplated in subsection (1)(a).

## **27. INSPECTION**

Upon the conclusion of all the hirer's activities at the end of the period of hire or at the termination of the hire under any of the provisions of these By-laws, the authorized representative of the Council and the hirer or his nominee must inspect the premises and facilities hired, for the purpose of assessing any damage or loss.

## **28. REGULATIONS**

The hirer must comply with the Council's reasonable security and fire protection regulations which may from time to time be in respect of the premises.

## **29. NUISANCE**

- (1) No person attending any cultural activity in hired premises may conduct himself or herself in an unseemly or obnoxious manner or cause a nuisance or annoyance to other people in or users of the premises, or to occupiers of other parts of the building or neighbouring buildings.
- (2) An authorized official of the Council may, during any cultural activity of the hirer, direct that the hirer removes from the facilities any person who is in a state of intoxication and who is behaving in an unseemly or obnoxious manner or causing a nuisance or annoyance to other people in or users of the premises, or to occupiers of other parts of the building or neighbouring buildings .
- (3) An authorized official of the Council may, during any cultural activity of the hirer, direct the hirer to prevent the entry on the hired facilities by any person who is in a state of intoxication and who behaves in an unseemly or obnoxious manner or is causing a nuisance or annoyance to other people in or users of the premises, or to occupiers of other parts of the building or neighbouring buildings.

## **30. OFFENCES AND PENALTIES**

Any person who .

- (a) contravenes or fails to comply with any provisions of these By-laws;
- (b) fails to comply with any notice issued in terms of these By-laws; or
- (c) fails to comply with any lawful instruction given in terms of these By-laws; or
- (d) obstructs or hinders any authorized representative or employee of the Council in the execution of his or her duties under these By-laws.

is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months.

## **31. CONFLICT OF LAWS**

If there is any conflict between these bylaws and any other bylaws of the council, these bylaws will prevail.