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eThekwini Museums By-law, 2015

Assented to on 24 June 2015

Commences on 17 March 2016 unless otherwise noted

To contribute towards the preservation and exhibition of art and objects of natural, historical, scientific, artistic or cultural importance; to promote education and research; to regulate the operation and use of museums; to determine the duties and powers of Directors of museums; to create offences and penalties; to provide for the repeal of laws and savings; and to provide for matters incidental thereto.

WHEREAS the Municipality recognises the contribution that museums make to preserving and developing art and objects of natural, historical, scientific, artistic or cultural importance;

WHEREAS the Municipality has competence in terms of Part B of Schedule 5 of the Constitution of the Republic of South Africa, 1996, to control local amenities;

AND WHEREAS the eThekwini Municipality has competence, in terms of section 156 (2) of the Constitution of the Republic of South Africa, 1996, to make and administer By-laws for the effective administration of the matters which it has the right to administer; and

NOW THEREFORE the eThekwini municipal council, acting in terms of section 156 read with Part B of Schedule 5 of the Constitution of the Republic of South Africa, 1996, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

Chapter 1 Interpretation

1. Definitions

In this By-law, unless the context indicates otherwise –

"art" means items of visual art including, but not limited to, ceramics, sculptures, drawings, paintings, prints, designs, crafts, photography and videos;

"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

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;

"collection" means a collection of art, museum objects, specimens and any exhibition for display or research purposes;

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

"council" means the eThekwini municipal council, a municipal council referred to in section 157(1) of the Constitution;

"Director" means the person designated by the Municipality as being in charge of a museum;

"exhibit" means to display art or museum objects for viewing by the public in a museum;

"flash photography" refers to the taking of photos or videos where a flash is fired;

"Municipality" means the eThekwini Municipality, a category A Municipality as envisaged in terms of section 155(1) of the Constitution and established in terms of Provincial Notice No. 43 of 2000 (KZN);

"Municipal Manager" means a person appointed in terms of section 54A of the Municipal Systems Act;

"museum" means any space which is identified by the Municipality for the preservation and exhibition of art or museum objects;

"museum object" means an object of natural, historical, scientific, artistic or cultural importance including a specimen and relevant electronic media;

"prescribed" means as determined by resolution of the council;

"special collection" means a section of a museum where art or museum objects are kept which cannot be made available for exhibition to the public without restriction, whether by reason of their value, rarity, fragility or otherwise; and

"visitor" means a person who visits a museum.

2. Interpretation of By-law

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

3. Objects of By-law

The object of this By-law is to ensure the operation of museums in a manner which—

- (a) preserves and develops art and objects of natural, historical, scientific, artistic or cultural

importance;

- (b) promotes research and education; and
- (c) ensures the sustainability of museums.

4. Application of By-law

This By-law applies to all areas which fall under the jurisdiction of the eThekwini Municipality and is binding on all persons to the extent applicable.

Chapter 2 Operation of museums

5. Functions and powers of Directors

- (1) A Director has the authority to manage a museum, and to control the day-to-day operations of that museum.
- (2) A Director may exercise any power or perform any other duties granted to him or her, in accordance with this By-law and any policy adopted by the council.

6. Museum opening hours

- (1) Each museum's opening and closing times must be –
 - (a) determined by the Municipality; and
 - (b) displayed on a sign at the entrance of the museum.
- (2) The Municipality may determine different opening and closing times for different museums.
- (3) The Director may temporarily close a museum for stock take, maintenance or any other purpose.
- (4) Any period of temporary closure must be advertised on a sign at the entrance to the affected museum for not less than seven calendar days prior to the closure.
- (5) A member of the public may not enter a museum outside of the opening hours or when the museum is temporarily closed.

7. Access to museums

- (1) Access to a museum is –
 - (a) available to any member of the public during opening hours, subject to the provisions of this By-law and any policy made by the council; and

- (b) free of any charge, unless the council has determined that an entrance fee is payable and this fact is advertised on a sign at the entrance to the affected museum.

8. Order to leave a museum

Any person who contravenes any provision of this By-law, or any policy adopted by the council may, in addition to any fine which may be imposed, be ordered to leave a museum by the Director or by any other authorised official.

9. Policies

The council may adopt and amend policies relating to any matter relevant to the establishment and operation of a museum.

Chapter 3

Exhibitions in museums

10. Photography

- (1) Flash photography is prohibited in a museum except with the prior written consent of the Director.
- (2) No photograph or video taken in a museum may be published without prior written consent of the Director.

11. Touching

No person may touch a museum object in a museum, or the case or stand in or on which such object is exhibited, unless the exhibit is specifically designated by a sign as being interactive.

12. Preservation and security

A Director may take all reasonable steps, and impose any reasonable restrictions on visitors to a museum, as may be necessary to preserve and secure any museum object.

Chapter 4

Loans of museum objects

13. Loans

- (1) A Director may, in accordance with a policy adopted by the council, loan museum objects to individuals or institutions for research, education or exhibition purposes.
- (3) A Director may charge a prescribed fee for the loan of a museum object to an individual or institution.
- (2) Any loan of a museum object is subject to such additional conditions regarding security, insurance, transport, storage and exhibition as may be deemed necessary by the Director.

14. Liability to return items

- (1) Any individual or institution which borrows a museum object is liable for the return of that object in the same condition as it was in when it was lent.
- (2) An individual or institution which returns a borrowed museum object in a poorer condition than the condition in which it was lent is liable for the costs of repairing or replacing that object, as may be required.
- (3) The Municipality must give written notice to the individual or institution concerned, recording the damage and requiring payment of the amount required to repair or replace the object.
- (4) If the amount referred to in subsection (3) is not paid within the time period specified in the notice, the Municipality may repair or replace the object itself, and recover the amount claimed from the individual or institution.

Chapter 5

Hiring exhibition space in museums

15. Hire of exhibition space

- (1) A Director may, in accordance with a policy adopted by the council, hire exhibition space in a museum to individuals or institutions.
- (2) Any hire of exhibition space is subject to such additional conditions as may be deemed necessary by the Director.
- (3) Any individual who, or institution which, hires exhibition space in a museum—
 - (a) is liable for the conduct of its employees, agents and guests in the museum;
 - (b) must timeously vacate the exhibition space; and
 - (c) must return the exhibition space to the Director in the same condition it was in when the space was made available.
- (4) An individual or institution is liable for any costs incurred by the Municipality in cleaning, repairing or otherwise restoring an exhibition space which is not returned in the same condition as it was when made available.

Chapter 6

Special collections and restricted areas

16. Special collections

- (1) A Director may designate any museum object as a special collection which is available for exhibition or research to visitors on a restricted basis and under the supervision of the Director.
- (2) A visitor may only access a special collection –
 - (a) on written application in the prescribed form;
 - (b) at times designated by the Director; and
 - (c) subject to any other requirements that may be imposed by the Director.

17. Restricted areas

- (1) A Director may exclude visitors from the museum or part thereof which is designated as a restricted area and is only accessible to staff of the museum.
- (2) A person may not enter a restricted area in a museum without the prior permission of the Director.

Chapter 7 Conduct

18. Conduct in museums

A person may not –

- (a) disturb any other visitors in their use of the museum;
- (b) eat or drink in a museum, unless in an area specifically designated for that purpose;
- (c) bring any animal into a museum, unless the animal is a guide dog for the blind;
- (d) bring any weapon into a museum;
- (e) enter a museum while inappropriately dressed in such a manner which may cause a nuisance or disturbance to other visitors;
- (f) enter a museum while under the influence of alcohol or any narcotic substances;
- (g) contravene any reasonable instruction given by a Director or authorised official;
- (h) contravene any sign displayed in a museum;
- (i) run in a museum;
- (j) enter a museum where he or she has been ordered to leave the museum by the Director and has not obtained the Director's permission to return;
- (k) damage any part of any museum building or contents thereof;
- (l) enter or remain in the museum after having been refused admission; or
- (m) contravene any provision of this By-law or any policy adopted by the council.

Chapter 8 Miscellaneous provisions

19. Offences and penalties

(1) A person who –

- (a) contravenes any provision of this By-law;
- (b) fails to comply with any lawful instruction given in terms of this By-law;
- (c) threatens, resists, interferes with or obstructs any Director or authorised official the performance of official duties or functions in terms of this By-law; or
- (d) deliberately furnishes false or misleading information to any Director or authorised official, is guilty of an offence.

- (2) Any person who is convicted of an offence under this By-law is liable to a fine of an amount not exceeding R20 000.00 or imprisonment not exceeding one year or to both such fine and imprisonment.
- (3) In the case of a continuing offence –
 - (a) an additional fine of an amount not exceeding R100; or
 - (b) imprisonment for a period not exceeding 1 day,for each day on which such offence continues or both such fine and imprisonment, will be imposed.

20. Delegations

- (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 Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), subject to the criteria set out in section 59(2) of 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.

21. Appeals

- (1) A person whose rights are affected by a decision taken by an authorised official in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons to the municipal manager within 21 (twenty one) 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 Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this By-law.

22. Repeal of laws and savings

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.

23. Short title and commencement

This By-law is called the eThekwini Museums By-law, 2015 and takes effect six months from the date of publication thereof in the Provincial Gazette or on such earlier date as may be determined by the publication of a commencement notice in the Provincial Gazette.

Schedule

REPEAL OF BY-LAWS

Number and year of law	Title	
Municipal Notice No. 90 of 1997	Durban Metropolitan Museum By-laws	Whole