



CITY OF EKURHULENI

EKURHULENI DEVELOPMENT AGENCY BY-LAWS

[MUNICIPALITY RESOLUTION: A – CORP (14 & 15 - 2017) DATED 26-JULY-2018]

[Date of Commencement: 29-August-2018]

UNDER THE POWERS CONFERRED BY SECTION 156(2) OF THE CONSTITUTION OF
THE REPUBLIC OF SOUTH AFRICA ACT, 1996 (ACT 108 OF 1996), READ WITH
SECTIONS 13(a) AND 86H(1) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS
ACT (ACT NO. 32 OF 2000),
THE CITY OF EKURHULENI METROPOLITAN MUNICIPALITY ADOPTS THE FOLLOWING
BY-LAW:

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EKURHULENI DEVELOPMENT AGENCY BY-LAWS

1. Preamble

- A. WHEREAS the City Ekurhuleni Metropolitan Municipality (“the City”) in terms of the Constitution of the Republic of South Africa, Act 108 of 1996 and other applicable legislation, is charged with the responsibility of ensuring the sustainable provision of municipal services within its area of jurisdiction;
- B. WHEREAS the City has approved alternative service delivery mechanisms for the provision of municipal services;
- C. WHEREAS with a view to deriving maximum benefit from the principles of performance based contracting, the City has decided to deliver the services through a wholly owned municipal entity under its sole control and ownership;
- D. WHEREAS acknowledging the challenges and the complexities associated with City’s current service delivery model;
- E. WHEREAS realizing the need to migrate or transfer the functions from the current service delivery mechanism to a service utility;
- F. WHEREAS recognizing the advantages of cost effectiveness obtained through a service utility as opposed to a company and an ordinary internal department;
- G. WHEREAS section 156(2) of the Constitution empowers the City with legislative authority to enact, administer and pass By-Laws;
- H. AND WHEREAS the Local Government: Municipal Systems Act 32 of 2000 affirms the constitutional power in the municipal council by stating that Council exercises legislative and executive authority of a municipality by passing By-Laws; and
- I. WHEREAS these By-Laws are an integral part of the applicable legal framework and regulations that give effect to the establishment of the Ekurhuleni Development Agency as a service utility.

BE IT THEREFORE ENACTED by the Municipal Council of the City of Ekurhuleni Metropolitan Municipality, as follows: -

CHAPTER 1
INTERPRETATION

2. Definitions and Interpretation

- (1) In these By-Laws, unless the context indicates otherwise:
- (a) "**Approval**" means any permission, authority, permit, licence, certificate, authorisation and any other approval required in terms of the Applicable Laws by the Council of the City under these By-Laws ;
 - (b) "**Authorised Official**" means an official, employee, agent, representative, delegated nominee or service provider of the Council who has been authorised by it to administer, implement and enforce the provisions of these By-Laws;
 - (c) "**Board**" means the Board of directors of the EDA, appointed in terms of section 93E of the Municipal Systems Act;
 - (d) "**Business Day**" means any day excluding a Saturday, Sunday or public holiday in the Republic;
 - (e) "**Chairperson**" means the Chairperson of the Board appointed from time to time;
 - (f) "**CEO**" means the chief executive officer of the EDA appointed in terms of section 21 of these By-Laws, who is also the accounting officer of EDA as contemplated in section 93 of the MFMA;
 - (g) "**CFO**" means the chief financial officer of EDA appointed in terms of section 13;
 - (h) "**City**" means the City of Ekurhuleni Metropolitan Municipality established under Government Notice no. 3585 of 2005 as published in the Gauteng Provincial Gazette Extraordinary No. 394 of 16 September 2005 in terms of section 12(1) of the Municipal Structures Act, or its successors-in-title, and includes:

- (i) any duly authorised officials of the municipality who have been delegated the necessary powers, functions and duties to give effect to these By-Laws and decide upon and administer the matters referred to herein; or
 - (ii) any structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Municipal Systems Act; or
 - (iii) a service provider fulfilling a responsibility under these By-Laws, assigned to it in terms of section 81(2) of the Municipal Systems Act, or any other law, as the case may be;
- (i) **“City Manager”** – the municipal manager appointed by the Council in terms of section 82(1)(a) or (b) of the Municipal Structures Act and who is also the accounting officer in terms of the MFMA;
 - (j) **“Constitution”** means the Constitution of the Republic of South Africa, Act 108 of 1996;
 - (k) **“Committee”** means a committee established by the Board in terms of these By-Laws from time to time, such as the risk management committee, social and ethics committee and finance and remuneration committee;
 - (l) **“Committee Member”** means members of any Committee of the Board as appointed in terms of the terms of reference of the specific committee;
 - (m) **“Council”** means the Council of the City as defined in section 1 of the Municipal Structures Act;
 - (n) **“Councillor”** means a member of the Council;
 - (o) **“Director”** means the directors of the Ekurhuleni Development Agency appointed in terms of section 13 of these By-Laws;
 - (p) **“EDA”** means the Ekurhuleni Development Agency, a municipal entity and juristic person within the local sphere of Government duly established as a

service utility under section 86H(1) of the Municipal Systems Act in terms of these By-Laws;

- (q) “**GDS**” means the City’s Growth and Development Strategy 2055;
- (r) “**IDP**” means the City’s integrated development plan, as envisaged in section 25 of the Municipal Systems Act, and which is aimed at integrated development and management of a municipal area within the City’s geographical boundaries;
- (s) “**MFMA**” means the Municipal Finance Management Act (Act no. 56 of 2003);
- (t) “**MMC**” means a member of the mayoral committee as contemplated in section 60 of the Municipal Structures Act;
- (u) “**Municipal Entity**” means a person or institution or body established in terms of Chapter 8A of the Municipal Systems Act;
- (v) “**Municipal Services**” means Municipal services as defined in the Municipal Systems Act;
- (w) “**Municipal Structures Act**” means the Local Government: Municipal Structures Act (Act no. 117 of 1998);
- (x) “**Municipal Systems Act**” means the Local Government: Municipal Systems Act (Act no. 32 of 2000);
- (y) “**SDA**” means the service delivery agreement entered into between the City as a parent municipality and the EDA as a Municipal Entity in terms of section 76 of the Municipal Systems Act, as amended from time to time;
- (z) “**Services**” means the services to be provided by the EDA to the City in terms of the SDA;

(aa) “**Service Area**” means the geographical area in respect of which the EDA is appointed (and where applicable, licenced in terms of applicable regulatory provisions) to render the services as set out in these By-Laws, read together with the SDA.

3. Legal Framework Governing the Service Utility

- (1) The legal framework governing this service utility shall be these By-Laws, including the following;
 - (a) the Constitution;
 - (b) the MFMA;
 - (c) the Municipal Systems Act;
 - (d) the Municipal Structures Act;
 - (e) the Labour Relations Act (Act no. 66 of 1995); and
 - (f) the City’s Entities Governance Framework.
- (2) These By-Laws are accordingly in line with the legal framework listed in subsections (a) to (f) above.
- (3) If the provisions of these By-Laws are in anyway inconsistent with the provisions of any applicable legislative framework, the legislative framework in 3.1 above shall prevail.

4. Application of the MFMA and the Municipal Systems Act

- (1) The EDA is a Municipal Entity as defined in section 1 of the MFMA and as set out in section 1 of the Municipal Systems Act.

(2) For the purposes of the MFMA, the CEO of the EDA is the accounting officer as contemplated in section 93 of the MFMA; and

(3) The Board is ultimately responsible for the governance of the EDA as contemplated in terms of section 93H of the Municipal Systems Act.

CHAPTER 2

ESTABLISHMENT OF THE SERVICE UTILITY

5. Establishment of the Service Utility

(1) The EDA is hereby established as a juristic person and a Municipal Entity under the sole control and the ownership of the City.

(2) Save to the extent specifically provided to the contrary in these By-Laws, EDA shall at all times operate as a separate legal person and shall at all times act as a service delivery mechanism to provide the municipal Services on behalf of the City.

(3) The EDA shall ensure that all of its activities are directed to the furtherance of its sole or principal objectives as set out in these By-Laws and must operate within the powers and functions assigned to it by the City in terms of these By-Laws.

(4) The establishment of the EDA as service utility is done in compliance with section 84 of the MFMA in all applicable provisions of the Municipal Systems Act.

6. Objectives of the Service Utility

(1) The main purpose and objective of the EDA is to *inter alia*:-

(a) promote sustainable economic growth and transformation within the City;

(b) enhance the quality of life of the community which the City serves;

(c) enhance branding and international promotion of the City in terms of the SDA;

(d) enhance investment attraction and retention of investors to the City in terms of the SDA;

(e) improve business and governmental efficiencies in creating opportunities for growth through coordinated access to competitive funding in terms of the SDA;

(f) enhance strategic real estate, urban realm and infrastructure development within the City in accordance with the SDA;

(g) enhance partnership facilitation, planning and prioritised planning of strategic programmes and projects within the City in accordance with the SDA;

(h) provide outdoor advertising management services to the City in accordance with the SDA.

(2) The two areas that have been identified as important strategic objectives of the EDA are:

(a) Business start-up and growth: to foster entrepreneurial business start-ups and create an environment that fosters growth;

(b) Human capital development: to facilitate new employment opportunities through creating opportunities for business synergy.

(3) The two areas identified in subsection (2))above will be embedded and find expression through the implementation of the main objectives as indicated in subsection (1) above.

(4) The EDA will also provide any other development output specific services as assigned to it by the City in terms of the SDA from time to time.

7. Powers of the the City as parent municipality

(1) The Constitution grants the City the right to govern on its own initiative, the affairs of the community within its area of jurisdiction. The City must therefore exercise its constitutional rights over the EDA subject to national, provincial and local government legislation.

- (2) The City shall fulfil its legal obligations of monitoring and regulating the performance of EDA in terms of these By-Laws.
- (3) The City shall provide assistance through funding and policy advocacy.
- (4) The City shall through its structures evaluate or assess the performance of the EDA on an annual basis against agreed performance.
- (5) EDA shall at all times maintain a full and accurate set of records of the services performed under these By-Laws.
- (6) EDA shall render reasonable assistance as may be necessary to allow the City to exercise its powers in terms of these By-Laws.
- (7) In order to exercise this monitoring and oversight roles in terms of these By-Laws, the City and its authorized representatives shall have a right to access all information belonging to EDA.

CHAPTER 3

RELATIONSHIP BETWEEN THE METRO AND THE SERVICE UTILITY

8. Service Delivery Agreement

- (1) The City and the EDA shall in terms of section 81(2) of the Municipal Systems Act enter into the SDA.
- (2) The City and the EDA must enter into the SDA within ninety (90) days of the appointment of the Board of the EDA.
- (3) The relationship between the City and the Service Utility shall be regulated by the SDA, which shall set out the framework within which the EDA will operate.
- (4) The SDA must set out the annual performance objectives and indicators for the EDA, including the following:
 - (a) Outline the parameters within which the EDA operates in compliance with these By-Laws;

- (b) It must specify the minimum levels of service delivery required from the EDA as a Service Utility;
 - (c) It must set out service levels agreed upon between the City and EDA, which will be subject to annual review; and
 - (d) It must provide a framework within which a detailed service delivery plan can be developed and implemented by the EDA.
- (5) The City may through the SDA assign the EDA with amongst others, the following responsibilities:
 - (a) to develop and implement detailed service delivery plans within the framework of the City's IDP;
 - (b) the operational planning, management and provision of the municipal Services;
 - (c) management of its own accounting, financial management, budgeting, investment and borrowing activities within a framework of transparency, accountability, reporting and financial control determined by the City, subject to the provisions of the MFMA; and
 - (d) collection of service fees or revenue for its own account from users of the Services.
- (6) The SDA may in accordance with applicable legal framework provide for the transfer or secondment of any of the City's employees to the EDA.
- (7) The scope of the Services to be rendered by the EDA may be changed by agreement between the City and the Service Utility pursuant to the business planning and budgeting process.
- (8) The SDA must be consistent with the MFMA and any applicable law or regulations.
- (9) The SDA must comply with the City's long term strategy, namely the GDS 2055.

- (10) In the event that the SDA cannot be concluded within the period specified in subsection (2) above, the City Manager or an authorized official may issue a directive in terms of section 8 of these By-Laws dealing with matters set out in subsection (4) above.

9. Service Levels and Standards

- (1) The City shall establish a performance management system in line with the priorities, objectives, indicators and targets contained in its IDP.
- (2) The performance objectives, targets and service standards that must be met by the EDA must be negotiated and agreed to by the parties in terms of the SDA.
- (3) Notwithstanding subsections (1) and (2) above, the Board must ensure that the EDA performance contracts for the CEO and senior management emphasizes the need to secure private sector co-funding for the EDA projects.
- (4) The Board of the EDA is ultimately responsible for the performance management of the EDA and all employees of the entity.
- (5) The Board shall develop internal performance management tools and protocol and ensure that the management of the EDA implements such internal performance management tools and protocols as are deemed to be in the best interests of the EDA.

10. Directives by the City

- (1) The City Manager or any duly authorized official from the City may issue a written directive to the EDA if he or she is of a view that such action is necessary to ensure that the EDA performs its functions in accordance with the By-Laws.
- (2) Particulars of any directives given during the financial year must be included in the annual report of the EDA.
- (3) The Board shall, if it deems it necessary, require the CEO to execute and implement a directive received in terms of subsection (1).
- (4) The CEO shall take all necessary steps to ensure that a directive is duly executed and implemented in terms of this section.

CHAPTER 4
FUNCTIONS AND GOVERNANCE OF THE SERVICE UTILITY

11. Functions of the EDA

(1) The functions of the EDA are grouped according to four functional areas that cut across the City's strategic objectives identified in the GDS 2055. The focus areas and related functions are:

(a) Branding and international promotion, namely to:

- (i) undertake international and local branding and promotion to attract investors, business and institutions, and tourism;
- (ii) create a prestigious brand both locally and internationally;
- (iii) increase global recognition as the destination for business and investment in developing economies;
- (iv) establish the City as an access point for trade and investment opportunities in South Africa and in Africa;
- (v) promote the competitive advantage of the City;
- (vi) anchor development and enhanced value for the City through a unified brand;
- (vii) increase visibility of the City nationally and internationally;

(b) Investment attraction and retention, namely to:

- (i) improve business and governmental efficiencies in creating opportunities fostering growth through coordinated access to competitive funding;
- (ii) realise targeted foreign direct investment;
- (iii) position the City as a competitive investment;
- (iv) inward investment through brokering with business, leaders and networks;
- (v) package investment and trade opportunities;
- (vi) improve investment readiness of key projects;
- (vii) increase response rate to investors.

- (c) Strategic real estate, urban realm and infrastructure development, namely to:–
 - (i) coordinate and prioritize strategic real estate, urban realm and infrastructure development programs and projects;
 - (ii) ensure improved efficiencies;
 - (iii) lever for further investment, capital and job creation;
 - (iv) provide a catalyst for future income;

- (v) procure a competitive rate of return.

- (d) Partnership facilitation, planning and visioning, namely to:
 - (i) create opportunities for facilitating stakeholder partnerships and common visioning aligned to coordinated and prioritised planning of strategic programs and projects;
 - (ii) obtain best practice insights from global peers;
 - (iii) foster stakeholder partnerships;
 - (iv) coordinate economic development programs and projects;
 - (v) ensure concurrent implementation of coordinated programs and projects;
 - (vi) provide a consolidated program and project performance monitoring and measurement;
 - (vii) procure consolidated resources and expertise;
 - (viii) ensure appropriate cost and risk allocation.

- (e) Outdoor advertising management, namely to:
 - (i) receive, assess, consider and evaluate applications to erect free-standing advertisements signboards, slat fences as determined in the City's advertisement By-Laws as well as direction boards subject to the policy of the City;

- (ii) receive, assess, consider and evaluate applications for permission for the temporary erection of advertisement posters on counsel's property and the temporary erection of route indication boards and signs along roads and streets subject to City's policy;
- (iii) receive, assess, consider and evaluate applications for the erection of temporary or permanent advertisement signboards, notice boards and posters in terms of the policy and By-laws of the City on advertising;
- (iv) implement procedures to ensure adherence to legal and regulatory requirements;
- (v) provide strategic inputs and direction on how to improve the process on the management of outdoor advertising to be effective and efficient;

(vi) forge a unified approach towards Outdoor Advertising Management in Ekurhuleni.

(2) In executing its functions, the EDA must ensure that it conforms and complies with all applicable legislation, regulations and policies of the City.

(3) The EDA shall, in addition to the above functions, establish the following:

- (a) operational guidelines and best practice models relating to governance, organisational efficiency, and use of technology;
- (b) funding guidelines, taking into consideration the imperative for the EDA to raise sufficient co-funding from third parties and the necessary approvals to be obtained from the City;
- (c) sound financial management systems and delegations of authority in terms of the applicable provisions of the MFMA; and
- (d) an effective, efficient and transparent system of risk management and internal controls to ensure clean and efficient administration. Particular consideration

must be given to ensuring transparency of processes and application of decision-making criteria, appropriate incentives and disincentives for officials, regular rotation of officials in client-facing or supply chain functions, and penalties for unethical behaviour.

- (4) The EDA must act in good faith and use its best endeavors to assist the City to ensure proper provision of the municipal services.

12. Powers of the EDA

- (1) Unless specifically restricted by these By-Laws, the EDA has all of the legal powers and capacity contemplated in the MFMA and Municipal Systems Act and may do all that is necessary to perform its functions, including to:-

- (a) purchase, hire or otherwise acquire and hold or let or deal with assets for purposes of these By-Laws, provided that such assets cannot be acquired or alienated without the approval of the City;
- (b) enter into sound partnerships with the private sector in the execution of its functions;
- (c) procure and/or raise funding, apart from any funding that may be provided by the City, from any third party for the furtherance of its objectives, subject to subsection 2(c) below and the provisions of the MFMA;
- (d) adopt (including the amendment thereof) any framework or policy of the City, with the proviso that such adoption ensures that the entity remains consistent with the provisions and minimum requirements of the MFMA, and other applicable legal framework;
- (e) ensure that the EDA is sufficiently insured against any risk, loss or damage connected with the exercise of its powers or performance of its functions or duties;
- (f) exercise any power or perform any other function conferred or imposed on it by or in terms of this By-Law or any other applicable law;
- (g) do anything else which is reasonable ancillary to any of its objects in terms of section 5, its functions in terms of section 6 and its powers in terms of this section.

- (2) The EDA shall not without the prior written approval of the Council:

- (a) permit any of its assets to become subject to any form of security, lien or hypothecation;
 - (b) alienate or dispose any of its assets; and
 - (c) become liable, whether as surety, co-principal debtor, guarantor or indemnifier for the liabilities or any third party.
- (3) The EDA shall not, directly or indirectly, distribute any of its funds or assets to any person other than in the furtherance of its objectives.
- (4) The EDA shall have the power to bid and pay for international and local events and provide sponsorships, subject to applicable legal framework and the City's policies.

CHAPTER 5
BOARD OF DIRECTORS OF EDA

13. Establishment of the Board of the EDA

- (1) The Board shall comprise of a minimum number of five (5) and a maximum number of eight (8) Directors, subject thereto that the Council shall be entitled by ordinary resolution to determine such amended maximum number of Directors as they from time to time shall consider appropriate..
- (2) The Directors shall be appointed in accordance with the prescripts of section 86H(2)(c) of the Municipal Systems Act, as well as the City Entities Governance Framework or any other policy determined by the City from time to time.
- (3) The Board must consist of at least a third of non-executive directors and have a non-executive Chairperson.
- (4) The Board of Directors shall be comprised as follows:
 - (a) two (2) executive members, who shall serve in an *ex officio* capacity:
 - (i) the CEO of the EDA; and
 - (ii) the CFO of the EDA;
 - (b) at least six (6) non-executive members, which must include:
 - (i) the Chairperson of the Board;
 - (ii) the deputy chairperson of the Board;
 - (iii) a duly authorised official or nominee of the City Manager, to serve until substituted or replaced by the City Manager; and
 - (iv) at least one (1) nominated representative from the City's Risk Management Department; and

(v) at least one (1) nominated representative from the City's Shareholder Oversight Unit.

- (5) The Board is a focal point for good corporate governance. Therefore, it must have the requisite range of expertise to effectively manage and guide the activities of EDA.
- (6) The Chairperson of the Board must be appointed by the Council in terms of the City's Governance Framework and the Board Charter of the EDA.
- (7) The deputy chairperson of the Board shall be appointed by the Council from the ranks of the non-executive members of the Board.
- (8) A Councillor may not be the Chairperson or deputy chairperson of the Board or a member of any Committee of the Board.
- (9) The Board may designate any other non-executive member to act as chairperson if both the Chairperson and deputy chairperson are absent or unable to perform any function.
- (10) It is recorded that on the commencement of these By-Laws, there might be a need for the appointment of an interim Board and an interim CEO to enable the EDA to commence operations immediately.
- (11) The Board shall be appointed in accordance with the following procedure:
 - (a) For the appointment of non-executive members, other than those to be designated by the City, the Council must by notice in two newspapers and the provincial gazette invite all interested persons to submit, within the period and in the manner mentioned in the notice, the names of persons fit to be appointed as members of the Board.
 - (b) The Council must appoint a nomination committee to make recommendations to the Council for the appointment of the non-executive members of the Board;

- (c) In establishing a nomination committee, the Council must ensure that the committee is broadly representative of the various racial groups and geographic areas of the Republic and that both males and females are represented.
- (d) The nomination committee, in making a recommendation for appointment to the Board by the Council, must consider:
 - (i) the proven skills, knowledge and experience of a candidate in areas of risk management, financial management, project management, governance compliance, transformation and diversity and economic background, necessary for the efficient and effective performance of the Board's functions; and
 - (ii) the need for representation of historically disadvantaged or disabled persons.
- (e) If a suitable person or the required number of suitable persons are not nominated as contemplated in subsection (d), the Council may call for further nominations in the manner set out in subsection (a).
- (f) The Council must appoint the non-executive members of the Board and, by notice in the provincial gazette, within thirty (30) days thereafter, publish the names of the members so appointed and the date of commencement of their terms of office.

14. Disqualification for appointment

- (1) A person shall not be appointed as a member of the Board, if that person:
 - (a) holds office as a councillor of any municipality;
 - (b) is a member of the National Assembly or a provincial legislature;
 - (c) is a permanent delegate to the National Council of Provinces;

- (d) has a material business relationship with any EDA transaction, production or service, or any relationship whatsoever that could reasonably be considered to be a material conflict of interest. For purposes of this subsection, “Material” means significant in the circumstances of a particular matter, to a degree of consequence in determining the matter or might reasonably affect a person’s judgment or decision-making in the matter;
- (e) was convicted of any offence and sentenced to imprisonment without the option of a fine, and a period of five years since completion of the sentence has not lapsed;
- (f) has been removed from any position of trust due to dishonesty;
- (g) has been declared by a court to be of unsound mind;
- (h) is an rehabilitated insolvent;
- (i) has been declared delinquent in terms of section 162 of the Companies Act (Act no. 71 of 2008) or if a court has prohibited that person to be a director; and/or
- (j) is prohibited in terms of any public regulation to be a director of a company.

(2) A member of the Board must vacate office if that member becomes disqualified in terms of subsection (1).

15. Term of Office and Removal of Directors

- (1) The term of office of each Director as well as the Chairperson of the Board shall be determined by the City’s Governance Framework for Entities or any other policy determined by the City from time to time. At the time of publication of these By-Laws, a Director’s as well as the Chairperson’s term of office is a period of three (3) years.
- (2) A Director shall not serve for more than two (2) terms of office.
- (3) The Chairperson of the Board and the chairperson of a Committee may not serve for more than one (1) term in such a position.

- (4) A Board member may resign by giving three (3) months' notice to the Council or such notice period as determined by the Council from time to time.
- (5) The City shall have sole and absolute discretion to remove or recall one or more Directors of the EDA without giving reason thereof.
- (6) The City may remove one or more Directors of the EDA in the following circumstances:
 - (a) non-attendance of the Board's meetings for at least (3) three consecutive meetings;
 - (b) if the performance of the Director is unsatisfactory;
 - (c) if a Director, either through illness or for any other reason, is unable to perform the functions of office effectively;
 - (d) if a Director has failed to comply with or breached any legislation pertaining to the conduct of directors, including the Companies Act;
 - (e) if a Director is convicted of fraud or theft or any offence relating to fraudulent conduct; and
 - (f) as a consequence of the Director:
 - (i) acting without the necessary authority;
 - (ii) acquiescing to the EDA carrying on business recklessly;
 - (iii) being present or participating in a decision or failing to vote against certain specified decisions which contravene the provisions of these By-Laws or any other applicable legislation;
 - (iv) having a material conflict of interest with the director's role as a member of the EDA Board, which conflict the director fails to resolve sufficiently to the satisfaction of the City;
 - (v) being party to any act or omission intended to defraud the EDA; and
 - (vi) signing or authorising the publication of any false or misleading financial statements.

16. Roles and Responsibilities of the Board

- (1) The Board is ultimately accountable and responsible for the governance, performance, service delivery and affairs of the EDA.
- (2) Subject to accountability and effective oversight by the City, the Board has the power to direct and control the business of the EDA.
- (3) Subject to accountability to the City, the Board must provide leadership and retain full and effective control over the direction and performance of the EDA.
- (4) The Board must provide transparent, accountable and coherent corporate governance.
- (5) The Board must ensure that the EDA acts and is seen as a responsible EDA that protects and advances the sustainability of destination marketing, the community and the environment.
- (6) The Board must communicate openly and promptly with the City and ensure that the EDA complies with all applicable legislation and agreements.
- (7) The Board is accountable to the City and therefore it must deal with the affairs of the EDA in good faith.
- (8) A Director must disclose to the Board and to the City, any direct or indirect personal or business interest that the Director or his or her spouse or partner or any related person may have in any matter before the Board and must withdraw from the proceedings of the Board when the matter is considered. The Board is required to inform the Council in writing on a quarterly basis of any such disclosures.
- (9) A Director must at all-times act in accordance with the Code of Conduct for directors referred to in section 93L of the Municipal Systems Act.
- (10) The Board may from time to time by resolution delegate any power that the Board has to the executive Directors, CEO, or any prescribed officer, provided that such powers so delegated may be similarly withdrawn.
- (11) The Board shall ensure that in each Financial Year, a budget of the EDA is prepared in accordance with the provisions of section 87 of the MFMA and submitted to the City.

- (12) The Board must ensure that the EDA is fully aware of and complies with all applicable laws and Regulations.
- (13) The Board must ensure that the City's performance objectives are achieved and that they can be measured in terms of the performance of EDA.
- (14) The Board must ensure that the Board Charter is adopted and the role and responsibilities of the Board must be fully set out in the Board Charter.
- (15) The Board must ensure that the guidelines set out are based in best governance practice on corporate governance in the Public Sector and are included in the Board Charter and that all Board members are conversant with the contents thereof.
- (16) The Board may establish Board Committees for the need and purpose determined by the Board in consultation with the City. The Board may in consultation with the City determine the qualification requirements of the Board Committee members.
- (17) The Board must create a corporate culture in which ethical actions are encouraged and developed.
- (18) The Board must implement an effective internal control system that ensures that the rules, the codes of practice and the ethical standards of the EDA are adhered to.
- (19) The Board must notify the Council immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the EDA.
- (20) The Board must refer to the Council any matter concerning the adverse functioning of the EDA.

17. Fiduciary Duties and Disclosure

- (1) A member of the Board must, upon appointment, submit to the Council and the Board a written statement in which it is declared whether or not that member has any direct or indirect financial interest which could reasonably be expected to compromise the board in the performance of its functions.

- (2) A member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect financial interest.
- (3) If a member of the Board acquires an interest that could reasonably be expected to be an interest contemplated in this section, he or she must immediately in writing declare that fact to the Council and the Board.
- (4) If an organisation or enterprise in which a member of the Board has an interest contemplated in this section is requested to offer its services to the EDA, or is in the process of concluding any agreement with the EDA, the organisation or enterprise must immediately, in writing, declare the member's interest to the Council and the Board.
- (5) A Board member must perform his or her functions of office and at all times exercise the utmost good faith, honesty and integrity, care and diligence in performing a member's functions, and in furtherance of this duty, without limiting its scope, must:
 - (a) take reasonable steps to inform himself or herself about the EDA, its business and activities and the circumstances in which it operates;
 - (b) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions;
 - (c) regularly attend all meetings;
 - (d) exercise an active and independent discretion with respect to all matters to be decided by the Board;
 - (e) exercise due diligence in relation to the business of, and necessary preparation for and attendance at meetings of, the board and any Committee to which the Board member is appointed;
 - (f) comply with any internal charter of the Board that the EDA may establish for Board members;
 - (g) not engage in any activity that may undermine the integrity of the EDA;
 - (h) not make improper use of their position as a member or of information acquired by virtue of his or her position as a member;

- (i) treat any confidential matters relating to the EDA, obtained in the capacity as a Board member, as strictly confidential and not divulge them to anyone without the authority of the EDA or as required as part of that person's official functions as a member of the Board.
- (6) This section must be interpreted as adding to, and not deviating from, any law relating to the criminal or civil liability of a member of a governing body, and criminal or civil proceedings that may be instituted in respect of such a liability.

CHAPTER 6

MANAGEMENT OF EDA

18. Board Charter

- (1) The Board must, not later than sixty (60) days after its appointment, formulate a Charter for the Board of EDA, which must at least, subject to these By-Laws:-
 - (a) Outline the roles and responsibilities of the Board of EDA, its committees and individual members;
 - (b) Set out the purpose and vision of the Board of the EDA;
 - (c) Set out the roles and responsibilities of the Chairperson of the Board, including the chairpersons of various committees;
 - (d) Confirm the Board of the EDA's responsibility to:-
 - (i) Adopt the strategic objectives and plans;
 - (ii) Monitor operational performance and management; and
 - (iii) Develop policy on risk management and internal controls.
 - (e) Provide guidelines on the distinction between the roles of the Board and management;
 - (f) Contain a code of conduct for the Board of the EDA and staff members;
 - (g) Identify functions intended to be delegated to management; and

- (h) Provide a framework for the appointment of senior staff for the EDA.
- (2) The Board Charter must regulate the framework within which the Board will operate, and must incorporate the duties of directors as set out in section 93H of the Municipal Systems Act and any other applicable legislation.
- (3) The Board must ensure that all Board Members of the EDA are aware of various legislation, principles of good Corporate Governance and other Codes which may affect their conduct.
- (4) The Board Charter must be submitted to the City before it is adopted in order to allow the City to comment on its contents.

19. Roles and Responsibilities of the Board Chairperson

- (1) The EDA's Board must be led by a Chairperson duly appointed in terms of the City's Governance Framework for Entities.
- (2) The Chairperson's responsibilities must be separate from those of management led by the CEO.
- (3) The Chairperson is the head of the Board and his responsibilities include, amongst others, the following:
 - (a) ensuring that all Board Members are fully involved and informed of any business issue on which a decision has to be taken;
 - (b) ensuring that the CEO and executive managers play an effective management role and participate fully in the operation and governance of the EDA;
 - (c) ensuring that the CEO and executive managers monitor the business and contribute sufficiently to the business decisions of the EDA; and
 - (d) exercising independent judgment, acting objectively and ensuring that all relevant matters are placed on the agenda and prioritised properly

(e) ensuring that the performance of the CEO is appraised on an annual or other more frequent basis as the EDA's circumstances may demand, either by the Chairperson him/herself or a sub-committee appointed by the Board.

(4) The Chairperson (including other non-executive board members) shall not be involved in the day to day operational management of the EDA.

20. Roles and Responsibilities of the Management of EDA

(1) The CEO and executive managers of the EDA are responsible for the day to day management of the EDA and to provide the Board with accurate and relevant information timeously.

(2) The EDA management must ensure that all Board members have unrestricted access to accurate, relevant and timeous information of the EDA, for the purposes of enabling the Board to give the necessary strategic direction.

(3) The management must manage the business of the EDA in accordance with the directives from the City and the Board.

21. Chief Executive Officer

(1) The Board shall in consultation with the City procure the appointment of the CEO.

(2) The CEO shall be appointed for a fixed term contract which shall not be more than five (5) years, subject to renewal by the Board.

(3) The CEO shall be an *ex officio* member of the Board;

(4) The CEO is accountable to the Board for the management of the EDA.

22. Human Capital

(1) The CEO with the concurrence of the Board may:-

(a) Appoint employees with appropriate expertise to assist the EDA in carrying out its functions;

- (b) Arrange with the City or other municipal entities owned by the City or any other body to have any employees to be seconded to the EDA; or
 - (c) Arrange with the City to have employees of the EDA seconded to the City or any other municipal entity owned by the City.
- (2) The CEO must ensure high-entrance requirements for any staff appointments, transfers or secondments to ensure the EDA has the experience, skills and qualifications that enable it to be competitive.
 - (3) Persons seconded to the EDA to perform their duties are subject to the control and direction of the CEO.
 - (4) Any appointment, transfer or secondment of personnel must be done in compliance with the applicable legal framework and/or labour laws.
 - (5) The Board of the EDA must determine the remuneration, allowances, benefits and other terms and conditions of appointment of members of staff.
 - (6) A dedicated human resource function shall be established which will be responsible for operationally efficient and effective management of all aspects of internal human resources within the EDA.
 - (7) Any collective agreements in the Local Government sphere and/or labour agreements in the City will not automatically extend to the EDA unless approved by the Board.

CHAPTER 7

BUDGET, REPORTING AND ACCOUNTING

23. Assets and Funding Arrangements

- (1) The EDA's funding shall be derived from the City.
- (2) The EDA shall have a right to generate additional funding from its operations to augment the budget received from the City.

- (3) In accordance with the MFMA, the City may transfer assets of the City or of any other municipal entity owned by the City to the EDA to enable it to fulfil its functions.
- (4) The City will make a determination of the staffing, assets and funding to be transferred to the EDA.
- (5) Where immediately before a transfer under subsection(1):
 - (a) the City had a right arising from a debt, liability or obligation of another person in respect of the assets transferred; or
 - (b) The City had a debt liability or obligation, the debt, liability or obligation is transferred from the City to the EDA.
- (6) The assets of the EDA include, amongst others, the following:
 - (a) Assets transferred to it by the City or under this By-Law;
 - (b) Capital asset needed to provide the minimum level of basic municipal services;
 - (c) Money appropriated by the City for the purpose of funding;
 - (d) Assets acquired by the EDA in the course of its operations;
 - (e) Money received by grant or donation from local and foreign aid agencies; and
 - (f) Money acquired by the EDA from any source approved by the City.
- (7) As contemplated in section 96 of the MFMA, the CEO is responsible for the management of the assets, including the safeguarding and maintenance of those assets.

24. Opening of the Bank Account

- (1) The EDA must open and maintain at least one bank account in its name and in accordance with the provisions of the Banks Act (Act no. 94 of 1990).

- (2) In line with section 85 of the MFMA, the CEO shall administer the EDA's bank account.
- (3) All money received by the EDA must be deposited into its bank account and this must be done promptly in accordance with any requirements that may be prescribed by the City.
- (4) In accordance with section 8(2) and section 97 of the MFMA, all money collected, funds or income received by the EDA must be transferred to the City in accordance with the SDA or any other agreement entered into between the City and the EDA in order to promote high performance and to attain a sufficient degree of financial sustainability, the EDA will enter into an agreement with the City regarding the ring fencing of revenue, or a portion thereof, generated by the EDA in the performance of its functions.

25. Budgetary, Monthly and Quarterly Report

- (1) The Board shall ensure for each financial year of the EDA, a budget is prepared and submitted to the City and finalized in accordance with the requirements of section 87 of the MFMA and the municipal budget and reporting regulations. The EDA shall adhere to the requirements of the Municipal Budget and Reporting Regulations as prescribed by the City from time to time.

26. Annual Reports and Annual Financial Statements

- (1) The CEO shall ensure the preparation and submission of the Annual Financial Statements within two months of the EDA's Financial Year end in accordance with the provisions of any legislation governing municipal entities.

27. The Business Plan

- (1) The EDA shall develop an annual Business Plan and Budget which shall be approved within the time limits provided for in terms of section 87 of the MFMA as read with the Municipal Budget and Reporting Regulations.

28. Procurement

- (1) The EDA shall develop a Supply Chain Management Policy to regulate procurement of goods and services in line with the applicable legal framework and cognisant with the City's supply chain management policy.

29. Accounting

- (1) The EDA must keep such accounting and related records according to generally recognized accounting practice and in the format prescribed by the MFMA.
- (2) The books of accounts shall be kept at the registered office of the EDA or at such other place as the Directors may deem fit.
- (3) Directors shall have a right of access at all times to the accounting records and all books and documents of the EDA.

30. Auditing

- (1) In accordance with section 92 of the MFMA, the Auditor-General shall be an external Auditor of the EDA.
- (2) The EDA must have an audit committee which must implement financial and risk management systems and internal control.
- (3) As set out in section 166 (5) of the MFMA, the members of the Audit Committee shall be appointed by the Municipal Council of the City from time to time.
- (4) The members of an audit committee must be appointed by the council of the municipality or, in the case of a municipal entity, by the council of the parent municipality. One of the members who is not in the employ of the municipality or municipal entity, must be appointed as the chairperson of the committee. No Councillor may be a member of an audit committee.
- (5) The Audit Committee is required to perform the responsibilities assigned to it in terms of section 165 and 166 of the MFMA.

31. Short Title

These By-Laws are referred to as Formation of the EDA as a Ekurhuleni Development Agency By-Laws.

32. Commencement

These By-Laws shall come into force and effect on date of publication in the provincial government gazette.

For Office Use

File:	1/4/1/1/34
Council Resolution:	A-CORP (14 & 15 – 2017) dated 26 July 2018
Gauteng Provincial Gazette Number	245 dated 29 August 2018
Local Authority Notice Number	1422