

**eTHEKWINI MUNICIPALITY: DURBAN FRESH PRODUCE MARKET BY-LAW, 2021**



Adopted by Council on the:

**DURBAN FRESH PRODUCE MARKET BY-LAW, 2021**

**To provide for the control and regulation of the Durban Bulk Fresh Produce Market which is owned and controlled by the Municipality; to provide for measures for managing the bulk market; to provide for measures for aligning the business within the bulk market with the objects of the Agricultural Produce Agents Act; for the repeal of laws and savings; and for matters incidental thereto.**

**PREAMBLE**

**WHEREAS** there is a need for the Municipality to regulate and manage the operations of the bulk market which is owned, controlled and managed by the Municipality;

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

**AND WHEREAS** it is necessary for the Municipality to provide the requisite facilities, and provide a trading system for the sale of fresh produce and articles sold at the market;

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

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**CHAPTER 1  
INTERPRETATION AND APPLICATION**

**Definitions**

1. In this By-law, unless the context indicates otherwise—

**"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, delegated nominees, representatives and service providers of 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;

**"article"** means any goods not defined as fresh produce which has been approved by the Municipality and sold on the market;

**"buyer"** means any person entering the precincts of the market for the purpose of purchasing fresh produce or any article offered for sale on the market or any person with whom a market agent has concluded a direct sale on behalf of a supplier;

**"buyer's card"** means a card, tag or an electronic identity issued by the Municipality enabling a buyer to transact on the market;

**"Chief Financial Officer"** means a person employed by the Municipality in terms of section 57 of the Systems Act as its Chief Financial Officer, and includes any person to whom the Chief Financial Officer has delegated or sub-delegated a power, function or duty in accordance with the system of delegations developed by the Municipal Manager in terms of section 59 of the Municipal Systems Act 32 of 2000;

**"commission market agent"** means any person who is a holder of a valid fidelity fund certificate issued in terms of the Act and a valid licence issued by the Municipality authorising such person to—

- (a) conduct business transactions in respect of fresh produce and article sold on behalf of suppliers as a market agent in return for a commission payable to the market agent and the Municipality; or
- (b) conclude any direct sale of fresh produce or article on the market in return for a commission payable to the market agent and the Municipality.

**"commission"** means a percentage based on the proceeds of sales payable to market agents and the Municipality;

**"consignment"** means any quantity of fresh produce consisting of distinct units of the same kind of produce entrusted to a market agent for sale;

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

**"container"** means any box, carton, tray, pocket, package or other receptacle of a size and shape approved by the Municipality;

**"direct sale"** means any sale of fresh produce in return for commission concluded by a market agent between a supplier and a buyer which has been authorised by the Municipality, in advance, in accordance with this By-law, but in respect of which the delivery of such produce is made directly between the supplier and the buyer without the produce concerned arriving at or being placed on the market;

**"employee of market agent"** means a person who is the holder of a permit issued by the Municipality upon application, authorising such person to be employed by a market agent, to function in the market sales halls on behalf of the market agent;

**"fidelity fund certificate"** means a fidelity fund certificate issued in terms of section 16 of the Act;

**"fresh produce"** means any kind of agricultural product authorised by the Municipality for sale in the market, herein referred to as produce;

**"licence"** means an official document issued by the Municipality in terms of this By-law certifying a person's appointment to function as a market agent at the market ;

**"market"** means the Durban Fresh Produce Market and any subsequent market of this nature which may be established by the Municipality after the commencement of this By-law, including any other land, buildings or premises under the ownership and control of the Municipality upon or in which the business of the market is conducted in accordance with this By-law;

**" market agent"** means a wholesale or commission market agent;

**"Municipal Finance Management Act"** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**"Municipal Council" or "Council"** means the eThekweni Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

**"Municipality"** means eThekweni Municipality, a category A municipality as envisaged in terms of section 155(1) of the Constitution of South Africa and established in terms of PN343 of 2000 (KwaZulu- Natal);

**"municipal manager"** means a person appointed in terms of section 54A of the Municipal Systems Act as the head of administration of the municipal council;

**"permit"** means an official document issued by the Municipality authorising the employment of any person to function as an employee of the market agent in the market sales halls or authorising any person to engage in the services of being porter within the market;

**"person"** means a natural person or juristic person;

**"Policy"** means the Policy adopted by the Municipality in terms of this By-law for the management and control of the market;

**"porter"** means a person who is authorised by the Municipality to function on the market with the sole purpose of assisting buyers with the collection and delivery of fresh produce to their delivery vehicles or storage areas on the market;

**"online trading platform"** means any sales transaction concluded by a market agent and which is captured on an electronic trading system where, fresh produce, which constitutes a sales transaction, has not been brought onto the market floor;

**"sale"** means a negotiated price and quantity reached between a salesperson of the market agent and a willing buyer recorded in the accounting records of the market;

**"sales receipt"** means documentary proof of a sale;

**"sales hall"** means a hall within the precinct of the market in which the sale of fresh produce takes place by the market agents;

**"salesperson"** means an individual employed by a market agent who is a holder of a salesperson's permit issued by the Municipality and who is a holder of a fidelity fund certificate issued by APAC in terms of the Act, and who trades on the market floor;

**"selling price"** means the amount for which any fresh produce or article has been sold to a buyer;



**"standard container"** means a container manufactured, woven or constructed in accordance with the specifications as prescribed in the manual of the South African Bureau of Standards, or any container approved by the Municipality;

**"standard operating procedures"** means procedures developed and approved by the Municipality for the management and control of the market;

**"supplier"** means the owner of fresh produce consigned to or delivered onto the market for sale, or any person delivering any article onto the market for sale, either for himself or any other person;

**"Systems Act"** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**"the Act"** means the Agricultural Produce Agents Act, 1992 (Act 12 of 1992);

**"trading system"** means an electronic trading system (information and communications technology system), that enables the recording of real-time sales transactions and other related sales operations functions;

**"unit"** means the quantity of any fresh produce or article which forms the basis upon which the price of such fresh produce or article is calculated; and

**"wholesale market agent"** means any person who procures fresh produce or article and who is issued with a valid licence by the Municipality to-

- (a) conduct business transactions in respect of fresh produce and article as a market agent in respect of which a market commission is charged; or
- (b) conclude any direct sale of fresh produce or article on the market in respect of which a market commission is charged.

### **Interpretation of By-law**

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

### **Objects of By-law**

3. The objects of this By-law are to—

- (a) provide for a trading system for the sale of fresh produce;
- (b) provide for facilities and services to facilitate the sale of fresh produce;
- (c) ensure effective management of the market;
- (d) provide for the licensing of market agents;
- (e) provide for the issuing of permits to employees of market agents based in the sales halls;
- (f) regulate proper conduct of persons within the precinct of the market;
- (g) provide an environment that is conducive to trade; and
- (h) provide for levying of fees, commission, tariffs, and rental for the provision of services and facilities.

### **Application of By-law**

4. This By-law applies to the market and is binding on all persons to the extent applicable.

## **CHAPTER 2 MANAGEMENT AND CONTROL**

### **Management authority**

5.(1) The Municipality is the authority responsible for the management and control of the business and operations of the market.

(2) The business and operations of the market referred to in subsection (1) must be conducted in accordance with the provisions of this By-law, subject to compliance with policies, standard operating procedures, rules and regulations and any other law which may be applicable to the conduct of market users, purchase and sale of fresh produce and articles on the market.

### **Market agents**

6.(1) No person may function as a market agent at the market unless he or she is a holder of

- (a) a licence issued by the Municipality; and
- (b) a fidelity fund certificate, where such person requires registration in terms of the Act.

(2) Commission market agents and wholesale market agents are appointed by the Municipality by calling for expression of interest.

(3) The appointed market agent shall be required to sign a service level agreement with the Municipality.

(4) In addition to the licence issued by the Municipality in terms of this By-law, a market agent must, before commencing to trade on the market, obtain all such licences as may be required by law for the sourcing and sale of fresh produce on the market.

(5) Subject to compliance with the applicable provisions of the Constitution and the rules of natural justice, the Municipality is empowered, at any time, to cancel the licence of any market agent who is found to be—

(a) interested, either directly or indirectly, in any other business establishment involved in the sale or purchase of, or dealing in, fresh produce of any kind usually sold on the market, or who acts in any way prejudicial to the interests of the market;

(b) not a fit and proper person to hold such licence by reason of improper conduct or an act of dishonesty committed by such person;

(c) having a lapsed or withdrawn fidelity fund certificate in terms of section 16 of the Act;  
or

(d) guilty of a contravention of any provision of this By-law.

(6) If the Municipality decides to cancel the licence of a market agent, it must notify the market agent in writing of its decision. A market agent whose market agent's licence has been cancelled must, subject to the provisions of section 37, immediately cease to source fresh produce, conduct sales and function as a market agent.

(7) The Municipality will not be held liable for any loss or damage resulting from the cancellation of any market agent's licence and no refund of any fee paid in respect of such licence shall be made by the Municipality resulting from such cancellation.

(8) The cancellation of a market agent's licence in terms of subsection (5) does not absolve the erstwhile holder of such licence from payment of any penalty prescribed for the contravention of any provision of this By-law.

(9) A market agent's licence is neither negotiable nor transferable and lapses automatically and is of no force and effect if the market agent—

- (a) is a natural person who has died or whose estate is sequestrated;
- (b) commits an act of insolvency as contemplated in the Insolvency Act, 1936 (Act 24 of 1936);
- (c) is a partnership that is dissolved for any reason whatsoever;
- (d) is a company that is placed under provisional liquidation or judicial management;
- (e) fidelity fund certificate has lapsed, withdrawn or suspended in terms of the Act;
- (f) is a close corporation that is placed under provisional liquidation; or
- (g) is a company, close corporation or partnership, and a change occurs in the shareholding of the company or the membership of the close corporation or the partners of the partnership without the written consent of the Municipality prior to such change.

### **Permits for employees of market agents**

7.(1) Prior to employing any person to function as an employee within the market sales halls, the market agent who wishes to employ such person must-

- (a) apply in writing to the Municipality, on a form prescribed for that purpose; and
- (b) pay the requisite fee,

in order for a permit to be issued in respect of such person.

(2) The person referred to in subsection (1) must not commence to function as an employee of the market agent on the market unless and until a permit in respect of such person has been issued by the Municipality.

(3) Subject to due compliance with the applicable provisions of the Constitution and the rules of natural justice, the Municipality is empowered to refuse to issue a permit or, at any time, to cancel a permit if the person concerned is found to be—

- (a) interested, either directly or indirectly, in any other business established for the sale of, or dealing in, fresh produce of any kind usually sold on the market, or who acts in any way prejudicial to the interest of the market;
- (b) not a fit and proper person to be employed as a employee of the market agent due to improper conduct or an act of dishonesty committed by such person;
- (c) no longer in the employ of the market agent;
- (d) sequestered;
- (e) possessing a withdrawn, suspended or lapsed fidelity fund certificate in terms of the Act;
- or
- (f) found guilty of a contravention of any provision of this By-law, policies or standard operating procedures.

(4) Notwithstanding sub-section (3) a permit holder's permit remains valid for as long as market agent's licence is valid.

(5) In the event of a change of the employee of the market agent in the sales halls-

- (a) the market agent concerned must notify the Municipality of such change within three days of the change occurring; and
- (b) the new employee of the market agent in the sales halls will be subject to the provisions of subsection (1).

(6) The market agent is responsible for the conduct of all persons in such market agent's employ and will be held liable for any non-compliance, damage done to municipal property, and injuries to persons by his or her employees, howsoever caused.

(7) Should an employee of a market agent be found guilty of a contravention of any provision of this By-law, policies and standard operating procedures, or any other law, the Municipality may:

- (a) in its discretion cancel the permit of the employee concerned; or
- (b) order the market agent not to re-engage the services of the employee concerned in respect of any business upon or within the market sales halls.

### **Salesperson**

8.(1) Prior to employing any person to function as a salesperson within the market sales halls, the market agent who wishes to employ such person must-

- (a) apply in writing to the Municipality, on a form prescribed for that purpose; and
  - (b) pay the requisite fee,
- in order for a salesperson's permit to be issued in respect of that person.
- (2) The person referred to in subsection (1) must not commence to function as a salesperson of the market agent on the market until a salesperson permit has been issued by the Municipality.
- (3) The Municipality may at its discretion withdraw a salesperson permit if the salesperson -
- (a) does not comply with any one or more of the provisions of this by-law;
  - (b) contravenes the code of the conduct as contemplated in the Act; or
  - (c) contravenes any policy rules or standard operating procedures.
- (4) A salesperson permit is neither negotiable nor transferable, and it lapses if a salesperson-
- (a) ceases to be employed by the market agent in whose employment he was in at the time when he was issued with the permit;
  - (b) estate has been sequestrated;
  - (c) fidelity fund certificate issued in terms of the Act, lapses, is withdrawn or suspended;
- or
- (d) is ordered at a hearing conducted by a disciplinary tribunal, committee or process to cease operating.
- (5) If the Municipality decides to withdraw a permit of a salesperson, it must notify the salesperson in writing of its decision. A salesperson whose permit has been cancelled must, subject to the provisions of section 37, immediately cease to conduct business as a salesperson.

### **Porters**

- 9.(1) A person may not work as a porter on the market unless such person is in possession of a permit issued by the Municipality upon payment of a prescribed fee: Provided that nothing in this section must be interpreted to compel the Municipality to issue a porter's permit to any person whom the Municipality reasonably believes to be unsuitable for work as a porter.
- (2) Every porter on the market must wear a uniform or overall with distinguishable features or logo determined by the Municipality from time to time, which must be kept clean and tidy at all times.

- (3) A porter may not –
- (a) while he or she is not engaged in providing porter services, enter any part of the market premises other than an enclosure or other area set aside by the Municipality for porters; and
  - (b) tout on the market by shouting or by persistently following a buyer or prospective buyer.
- (4) A porter is not allowed to purchase fresh produce on the market for the purpose of re-selling such fresh produce or trading therein.
- (5) A porter may, however, purchase fresh produce on the market which he or she, in good faith, requires for his or her own private consumption.
- (6) A porter's permit is neither negotiable nor transferable, and the Municipality may withdraw a porter's permit if the porter –
- (a) does not comply with any one or more of the provisions of this by-law;
  - (b) fails to pay the prescribed fee referred to in subsection (1); or
  - (c) uses a trolley in an improper and dangerous manner that can cause injury to a person or damage to property.
- (7) A porter must render his or her porter services at his own risk, and the Municipality is not liable to the porter in respect of any loss or damage, whether to personal property, resulting from the porter's services.
- (8) The Municipality is not liable to any person in respect of any loss or damage, whether to person or property, caused by a porter in the porter's execution of his or her porter services.
- (9) A porter who contravenes any provision of this By-law, policies or standard operating procedures may be suspended by an authorised official who may cancel the permit issued to such porter upon following due process without refunding any fee paid by such porter in respect thereof.
- (10) The Municipality may, at its own discretion, decide to discontinue the services of porters.

**Vehicular traffic**

10.(1) The Municipality is empowered to control and regulate the volume, speed and movement of traffic entering the market and within its precincts, including the –

- (a) demarcation of parking bays and the allocation thereof;
- (b) determination and levying of tariff charges and fees for the use of parking bays; and
- (c) levying of fines for non-compliance with the traffic signage within the precincts of the market, as well as the recovery thereof.

(2) For the purposes of this section, the registered owner of any vehicle is presumed to be the driver of such vehicle.

(3) Except for vehicles authorised to enter inside the sales halls for operational reasons, no person may enter the sales halls with a vehicle.

(4) Any vehicle which is used in contravention of the traffic signage applicable within the market may be impounded, wheels clamped and/or fined by the Municipality: Provided that reasonable steps must be taken by the Municipality to bring to the attention of road users within the market the relevant traffic signage and, where practicable, the penalties for the contravention thereof.

(5) A vehicle impounded or clamped by the Municipality in terms of subsection (4) may be held or remain clamped by the Municipality until a fine in the amount determined by the Municipality is paid in full to secure the release thereof, together with any additional amount accrued for storage or parking.

**CHAPTER 3  
TRADING AND RELATED ACTIVITIES**

**Lease of premises**

11.(1) The Municipality may, lease through a written lease agreement all tenable space on the market for such purposes and on such terms and conditions as may be determined by the Municipality from time to time.



### **Responsibilities of market tenants in respect of leased premises**

- 12.** A person who is leasing premises from which to conduct business on the market must—
- (a) at all times, keep such premises, including any roadway, gangway or passage adjoining same, clean and tidy to the satisfaction of the Municipality;
  - (b) provide, at his or her own cost, an adequate number of bins of a type and size approved by the Municipality for the disposal of refuse on the leased premises, the contents of which must be regularly removed and dumped in a place determined by the Municipality;
  - (c) obtain prior written consent of the Municipality to store on such premises any produce other than stationery or other office equipment required for use in the leased premises;
  - (d) restrict the cooking of food items on the market to such part of the market as may be set aside and demarcated by the Municipality for that purpose;
  - (e) maintain the structural integrity of the leased premises and refrain from effecting any structural changes thereto, including the erection of fittings, shelving or partitions without the prior written permission of the Municipality; and
  - (f) have affixed, at his or her own expense, at the entrance to the leased premises a board approved by the Municipality bearing in letters of legible size and colour the tenant's business' name, which must be preserved legibly and un-defaced for as long as the tenant remains the occupier of such premises.
  - (g) provide access to market officials to conduct inspections and any other activities the Municipality may deem necessary.

### **Conduct of market agents**

**13.(1)** A market agent must conduct his or her business in accordance with the market's code of conduct, standard operating procedures, and rules made under the Act and the provisions of this By-law.

(2) Only a market agent is allowed to sell fresh produce or article to buyers in the sales halls.

(3) Every market agent who conducts business on the market must comply with such other lawful instruction or order as may be issued by the Municipality from time to time for the effective management and control of the market, and must unless otherwise directed by the Municipality, conduct all sales by private treaty without giving unfair preference to any person whatsoever.

(4) The Municipality may, at any stage, adopt and review procedures and code of conduct to regulate the conduct of market agents on the market.

(5) A market agent must, where applicable-

(a) at all times comply with the Occupational Health and Safety Act, (Act 85 of 1993) and any other regulations;

(b) maintain such integrity, objectivity and independence in the practicing of his or her occupation as is necessary to enable him or her to apply unbiased judgment and objective consideration in forming an opinion or arriving at a decision;

(c) represent his or her supplier on an equal basis by making fresh produce or article available to all buyers without any unfair preferential treatment in terms of fresh produce availability and pricing unless conducting a direct sale;

(d) respect the authority of the authorised official and co-operate with authorised official in the execution of his or her duties in accordance with the market Bylaw, policies, procedures and any other rules or agreements applicable to the market; and

(e) not reserve any fresh produce for any buyer without such fresh produce being paid for, unless authorised by the Municipality.

#### **Off-loading of fresh produce or article on arrival**

**14.(1)** Any fresh produce or article to be offered for sale on the market must, on arrival, be delivered to a market agent or relevant market tenant, who must immediately make all arrangements deemed necessary by the Municipality to off-load and place such fresh produce or article in the space or enclosure provided for it.

#### **Delivery of fresh produce or article**

**15.(1)** Any person delivering or causing to be delivered to the market any fresh produce or article to be offered for sale thereon must, immediately upon its arrival, register such fresh produce or article with the Municipality.

(2) No person may deliver fresh produce or any article to the Market without applying for and receiving due authority from the Municipality.

(3) In the event of a direct sale, the market agent must, for the purpose of obtaining the Municipality's approval thereof, provide the Municipality with the purchase price relating to such sale, a sales docket and a delivery note showing such information as the Municipality may, from time to time, reasonably require in respect of a direct sale.

**Municipality's discretion to reject certain fresh produce or article**

**16.(1)** An authorised official may refuse to offer for sale or to permit to be sold any fresh produce or article which he or she reasonably suspects to have been stolen, diseased, unfit for human or animal consumption, offensive or contained in a container that is likely to contaminate it or any other fresh produce or article with which it may come into contact.

(2) If the authorised official reasonably suspects the goods to have been stolen only after the sale has been concluded, or if the sale of fresh produce or article suspected to be stolen is nonetheless allowed to proceed by the authorised official, the proceeds of such sale may be retained by the Municipality until satisfactory proof of ownership of the fresh produce in question is furnished to the Municipality.

(3) Produce found to be unsaleable may be removed from the market by an authorized official after issue of unsaleable certificate.

(4) Upon a certificate issued by the Municipality confirming the authorised official's suspicions in terms of subsection (1), the Municipality may seize and condemn any such offensive, diseased or unfit fresh produce and destroy it, and the owner of such fresh produce may not claim any compensation in respect thereof and maybe liable for recovery of disposal costs.

**Inspection, grading, packing and marking of fresh produce or article**

**17.(1)** The Municipality may inspect or cause to be inspected any fresh produce or article exposed for sale on the market in order to ascertain whether it is healthy and free from disease, infection or contamination and may, if any fresh produce is found to be unhealthy, diseased, infected or contaminated, take or cause to be taken such steps as the authorised official may deem appropriate, including the seizure, condemnation or destruction of the fresh produce concerned.

(2) Any fresh produce which is required by law to be graded may not be offered for sale or sold on the market unless—

(a) it has been submitted by the market agent concerned for inspection and has been inspected as prescribed by law; and

(b) the grade assigned to it as a result of such inspection has been clearly marked on it by such market agent or inspector.

(3) Any fresh produce which is required by law to be offered for sale or sold by mass, or to be packed, marked or graded in a prescribed manner, may not be offered for sale or sold or removed from the market unless it complies in every respect with the requirements of such law.

### **Commencement and closing of sales**

**18.**(1) Sales within the sales halls must commence and close at such times as may be determined by the Municipality from time to time.

(2) No person within the sales halls may conduct a sale outside the times determined by the Municipality in terms of subsection (1) without obtaining prior written authority of the Municipality to do so.

(3) The Municipality may regulate trading times of other market tenants within the sales halls.

### **Storage**

**19.** No person may without the prior written approval of the Municipality store or leave any produce, article, item or thing of whatever nature on the market premises.

### **Sale of fresh produce or article**

**20.**(1) The parties to a floor sale must be the buyer and the salesperson of the market agent concerned, and the Municipality may not be a party to a floor sale or in any manner be held liable for the due fulfillment of the terms of the floor sale.

(2) Fresh produce must be sold according to its consignment number, mass, count, grade, quantity or as otherwise required by law or as determined by the Municipality.

(3) Except in the case of a direct sale, the market agent concerned is responsible for ensuring that fresh produce which is required to be sold by mass is arranged in units, the mass of which must comply with any legal requirements, before such fresh produce is displayed for sale, offered

for sale or sold and such mass must be clearly and legibly marked on such fresh produce or its containers, unless exemption is granted by the Municipality.

(4) Produce or article on the market floor may only be sold to a buyer who holds a valid buyer's card issued by the Municipality.

(5) When conducting a floor sale, the buyer must immediately present his or her buyer's card to the market agent concerned, who must record the details of the sale in the manner prescribed by the Municipality from time to time.

(6) A person may not display a sample of any fresh produce for sale or sell any fresh produce by sample unless such sample is truly representative of the entire consignment, and the Municipality is entitled to do whatever it deems necessary to satisfy itself that the entire consignment is truly represented by the sample so displayed or offered for sale.

(7) The Municipality in its discretion, may direct that any article brought to the market be sold by auction.

(8) The Municipality may make provision for an online trading system.

### **Purchase and sale by municipal employees**

**21.** No employee of the Municipality who is stationed at the market or is in some way involved in the market is permitted to purchase fresh produce on the market for the purpose of re-selling such fresh produce or trading therein. Such employee may, however, purchase such fresh produce as he or she *bona fide* requires for his or her own private consumption, provided that there is no price preferencing.

### **Purchase by market agents**

**22.** No market agent or his or her employee is permitted to purchase fresh produce on the market for the purpose of re-selling such fresh produce or trading therein. Such market agent or employee may, however, purchase such fresh produce as he or she *bona fide* requires for his or her own private consumption, provided that there is no price preferencing.

### **Removal of fresh produce or article**

**23.**(1) Unless otherwise permitted by the Municipality upon good cause shown, a buyer must collect and remove immediately all fresh produce or article purchased by him or her from the sales halls, or within such further period after the sale as may be allowed by the Municipality.

(2) No person may remove any produce or article from the sales hall unless –

(a) he or she is in possession of a valid removal note in respect of the produce ;or

(b) permission has been granted by the authorised official for the removal of produce or article in writing.

(3) The market agent concerned is responsible for issuing to the buyer the correct quantity, mass, quality, grade and variety of the purchased fresh produce.

(4) Subject to the provisions of section 10, the Municipality may set aside loading bays to cater for the loading and off-loading of goods on the market.

(5) Except by reason of a cause beyond a person's control, a person operating or in charge of a vehicle may not allow such vehicle to remain stationary in a loading bay for any purposes other than for the loading or off-loading of goods: Provided that a vehicle may not remain in a loading bay for a period longer than is necessary for the loading or off-loading of goods, and such loading and off-loading must be carried out without delay.

### **Cold storage and ripening**

**24.**(1) The Municipality may –

(a) make available cold storage and ripening facilities for the storage and ripening of fresh produce which use thereof is at the risk of the market user concerned; and

(b) charge a tariff as determined by the Municipality from time to time for such storage and ripening.

(2) Any person who makes use of any cold storage and/or ripening facilities

referred to in subsection (1) must do so at his or her own risk, and the Municipality is not liable for any loss, damage or injury to fresh produce placed in the cold or the ripening room however caused.

(3) No equipment other than those approved by the Municipality are permitted to operate inside the cold storage and ripening sections.

## **CHAPTER 4**

### **MAINTAINING OF SALES RECORDS AND RELATED TRANSACTIONS**

#### **Sales dockets**

**25.**(1) In the case of all sales, a sales docket generated through the market trading system must be issued to the buyer by an employee of the market agent concerned immediately upon a sale being concluded.

(2) A sales docket referred to in subsection (1) must be clearly and legibly completed and must contain such information as may be required by the Municipality from time to time.

#### **Payment for purchases**

**26.**(1) The buyer of any fresh produce must pay the agreed purchase price through his or her buyer's card immediately after the agreement of quantity and price has been determined.

(2) A market agent or his or her employees may not receive or handle cash in respect of any purchase on the market.

(3) The Municipality is authorised to furnish any buyer with a buyer's card and reserves the right to decline a buyer's card's application or cancel any buyer's card at its own discretion.

#### **Commission on sales**

**27.**(1) The supplier is liable for payment to the Municipality of a commission as determined by the Municipality from time to time for every floor sale concluded on his or her behalf.

(2) The Municipality will deduct the commission referred to in subsection (1) from the proceeds of the purchase price of every floor sale.

#### **Proceeds of sales**

**28.(1)** The Municipality must, as soon as practicably possible, pay the proceeds of a sale of any fresh produce or articles consigned to a market agent and sold on the market, to such market agent or supplier, as the case may be, after deducting from it all monies (inclusive of commission on sales), levies, tariffs, any other charges or charges payable to the Municipality in respect of such sale.

(2) The market agent must account promptly, correctly and in full to the supplier for the proceeds of any sale received in the trust account of such market agent and must, as reasonably as practicable, thereafter pay to the supplier the amount owing to such supplier after deducting from such monies any amount which the market agent is legally entitled to.

(3) The Municipality may furnish any supplier with such information relating to the sale of any fresh produce sold by any market agent on behalf of such supplier as the Municipality may deem appropriate, and the market agent must, at the request of the Municipality, furnish the Municipality with such information relating to such sale as the Municipality may require.

#### **Record of transactions**

**29.(1)** The Municipality must maintain a correct record of all fresh produce or articles sold on the market.

(2) The Municipality may at its discretion make available any statistical information pertaining to stock and prices that it believes will contribute to improving transparency and fairness.

(3) All monies handled by the Municipality on behalf of buyers and producers must be maintained in a separate account. The Municipality can only use this bank account for the purpose of receiving proceeds from the sale of fresh produce or article sold by market agents and associated market related activities.

(4) Market agents must where applicable maintain a trust account for the purpose of receiving proceeds of such sales on behalf of suppliers, which trust account is to be made available to the Municipality upon request for inspection and compliance purposes.

## **CHAPTER 5**



## **POLICING CONDUCT AND LIMITATION OF LIABILITY**

### **Unclaimed and un-cleared fresh produce or article**

**30.**(1) Any fresh produce or article stored without authorisation within the market or unclaimed within the specified number of hours as determined by the Municipality, may be sold by the Municipality, and the Municipality must hold the proceeds of such sale, less all market charges payable to the Municipality, on behalf of any person duly establishing a claim thereto.

(2) A claim referred to in subsection (1) may not be recognised after the expiration of 90 days from the date of sale, and in such case all the proceeds of such sale shall revert to the Municipality.

(3) If unclaimed fresh produce or article is claimed within the specified number of hours as determined by the Municipality before it is sold as per sub-section (1), the Municipality may charge a penalty to such a person claiming such fresh produce or article.

### **Powers of authorised official**

**31.** An authorised official is entitled to –

- (a) inspect any produce, article, item, object or thing of whatever nature on the market premises;
- (b) prohibit the produce from being sold until he is satisfied of the ownership of the produce, if he reasonably suspects that any produce or article offered for sale is stolen,
- (c) request any documentation or information relating to any aspect whatsoever of the sale of produce on the market premises, and the person to whom the request is made must furnish the authorised official with documentation or information immediately;
- (d) instruct any person who has placed any produce, article, item, object or thing on the market premises that causes an inconvenience or obstruction to remove the produce, article, item, object or thing;
- (e) prohibit the cleaning, stripping or peeling of produce on the market premises or in any part of the market premises; and
- (f) issue such instructions as he or she may deem necessary, which instructions may be contained in a notice or notices affixed to notice board or notice boards situated in a prominent place on the market premises.

**Risk in respect of fresh produce or article**

32.(1) The delivery of any fresh produce or article onto the market for sale is at all times at the risk of the supplier until such fresh produce or article is sold, except in a case where such produce or article is in the care of a wholesale market agent.

(2) The care and safekeeping of the fresh produce or article is at the risk of the market agent concerned whilst on the market.

(3) Any fresh produce or article sold is at the buyer's sole risk from the moment it is sold.

(4) The Municipality will not be held liable for any loss or damage to fresh produce or article stored on the market,

**Indemnification from liability**

33.(1) The Municipality may not be held liable for any error of description, shortage or excess in quantity or lack of quality in regard to any fresh produce or article sold on the market.

(2) Any person who enters the market premises must do so at his own risk, and neither the Municipality nor any of its employees is liable for any loss or damage, whether to person or property, suffered by such person arising from any act or omission done by such an employee in the execution of his duties and in good faith.

(3) The Municipality will not be responsible for any damage, loss or injury sustained by any person making use of its market facilities at any time caused as a result of any negligent act or omission of the Municipality, its employees, persons acting on its behalf, or any person making use of its facilities.

**Recovery of monies**

34.(1) The Municipality may recover any monies due and outstanding in respect of any business conducted on the market, including—

- (a) monies owing by either the suppliers or buyers in respect of any market sales; and
- (b) any monies due and payable in terms of any provision of this By-law.

(2) The Municipality is empowered to set off against any outstanding debt any monies in the Municipality's possession belonging to a debtor.

(3) The Municipality may institute legal action against any person in connection with any matter relating to the provisions of subsection (1).

### **Prohibited conduct**

**35.(1)** A person entering the market must at all times act in strict compliance with this By-law, policies, standard operating procedures , and any notices displayed as well as such lawful instructions and orders as may be issued or given by an authorised official for the proper management and control of the market.

(2) Subject to subsection (1), a person may not commit, in or about the market, any act which disrupts, or is, in the opinion of the Municipality, likely to disrupt the normal business of the market, including the following:

- (a) causing a nuisance, or behaving in a manner which is disorderly or unseemly, or use of threatening, obscene, abusive, violent, offensive or disgusting language;
- (b) touting for customers;
- (c) interfering with or obstructing any employee of the market or market agent in the execution of his or her duties;
- (d) organising or conducting a meeting without obtaining the prior written consent of the Municipality;
- (e) touching, tasting, smelling, handling or removing any fresh produce exposed for sale in such a way as to expose it to contamination;
- (f) keeping or exposing for sale any article or item of an offensive nature;
- (g) smoking in the sales halls, trader's hall, offices, toilets, public places, and any other part of the market where a notice prohibiting smoking is displayed;
- (h) lighting a fire, save at such times and in such places as have been authorised by the Municipality;
- (i) standing, sitting, laying upon or leaning against any article or container;
- (j) without lawful reason tampering with or removing or causing to be removed any fresh produce placed or exposed for sale, or any container, or any label on such fresh produce or container;

- (k) without the written permission of the Municipality, erecting any additional fence or buildings on premises hired from the Municipality, or converting existing buildings or erecting partitions or installing or extending existing water or electrical leads or fittings or making any other changes of a like nature on such premises;
- (l) causing or permitting any solids or other matter likely to cause blockage in or damage to drains to enter any drain or gulley, or causing to permit any sewage, oil, foul water or other objectionable substance to enter any storm water drain;
- (m) without the permission of the Municipality, washing, packing, sorting, grading, or cleaning any fresh produce in an area not designed for that purpose;
- (n) throwing or depositing in any place other than receptacles provided for that purpose, any fruit, peel or any other vegetable matter or refuse;
- (o) bringing any intoxicating substance onto the market or entering or remaining upon the market while under the influence of an intoxicating substance;
- (p) damaging, ruining or tampering with any article brought onto the market, or any building or property within the market which belongs to the Municipality;
- (q) disposing of any article by way of a gift or in any manner giving delivery of any article to another person within the precincts of the market, save as in accordance with the provisions of this By-law;
- (r) selling, marketing, or promoting of fresh produce on the sales floors of market agents without a permit issued by the Municipality;
- (s) bringing onto the market any refuse, garbage or vegetable matter for the purpose of discarding such refuse, garbage or vegetable matter within the precinct of the market;
- (t) loitering on the market or within the sales halls and sales floors.
- (u) cooking food, toasting bread or making tea or any other beverage in any part of the market other than in such places as may have been set aside for such purpose, or
- (v) placing any fresh produce or article anywhere in the market so as to cause inconvenience or obstruction of any nature whatsoever.

(3) An authorised official is entitled to remove from the market any person who is in a state of intoxication or who fails to comply with subsections (1) or (2).

(4) A person removed from the market in terms of subsection (3) must not re-enter any part of the market on the same day on which such person was so removed.

(5) Notwithstanding subsections (4), the Municipality is empowered to exclude any person referred to in subsection (3) from the market for any period not exceeding three months considering the nature of the matter and the number of warnings issued. The Municipality may in severe and extreme cases permanently prevent such person from entering the market.

(6) Subject to the provisions of the Criminal Procedure Act, an authorised official is empowered to arrest without a warrant any person found committing any offence within the precincts of the market or any person whom the Municipality or an authorised official believes, on reasonable grounds, to have committed a serious offence in terms of this By-law or any other law.

## **CHAPTER 6 MISCELLANEOUS**

### **Delegations**

**36.(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 50(2) of the 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.

## **Appeals**

**37.(1)** A person whose rights are affected by a decision taken by the Municipality in terms of this by-law may appeal against that decision in terms of the Appeals provision contained in the Systems Act by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.

(2) The Municipal Manager must 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 carried out in terms of the Systems Act, and not in terms of this By-law.

(7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

## **Offences and penalties**

**38.(1)** A person is guilty of an offence if such person—

(a) contravenes any provision of this By-law;

(b) fails to comply with the terms of any notice or signage displayed in terms of this By-law;

(c) contravenes any condition imposed upon the granting of any application, consent, approval, permit, licence or authority in terms of this By-law;

(d) fails to comply with an order or terms of any notice served upon such person in terms of this By-law;

(e) obstructs, hinders, or in any manner interferes with an authorised official who is acting or entitled to act in terms of this By-law; or

(f) fails to obey any lawful instruction or direction given to him or her in terms of this By-law.

(2) A person who is convicted of an offence under this section is liable to a fine of a maximum amount not exceeding R40 000 or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

(3) Notwithstanding the provisions of subsection (2), and subject to the rules of natural justice and the Constitution, the Municipality may conduct an informal inquiry into an alleged breach of any provision of this By-law by any person which, in the opinion of the Municipality, is not serious enough to warrant prosecution in terms of subsection (2).

(4) If sufficient evidence is adduced to the satisfaction of the Municipality that the person referred to in subsection (3) has committed an alleged breach of this By-law, the Municipality may summarily find such person guilty of committing the alleged breach without a formal hearing being held, and impose upon him or her such penalty as he or she may deem appropriate, subject to the right of the person concerned to appeal against the Municipality's finding or penalty in terms of this By-law.

### **Repeal of laws and savings**

**39.**(1) The By-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.

(2) Any rights accrued or obligations incurred under the repealed By-laws remain in force as if those by-laws have not been repealed.

### **Transitional provisions**

**40.** (1) Any market agent who was authorised to trade as a market agent in any of the municipality's markets before the coming into operation of this By-law will be authorised to trade in the market.

**Short title and commencement**

**41.** This By-law is called the Durban Fresh Produce Market By-Law, 2021, 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  
LAWS REPEALED**

<b><i>Number and year of law</i></b>	<b><i>Title</i></b>	<b><i>Extent of repeal</i></b>
Provincial Notice No. 149 of 1975 published in Provincial Gazette No. 3849 dated 27 February 1975	Market Bylaws: Durban National Fresh Produce Market	The Whole