

PROVINCIAL NOTICE 217 OF 2022

eTHEKWINI MUNICIPALITY: ACCOMMODATION ESTABLISHMENTS BY-LAW, 2022



Adopted by Council on the:

ACCOMMODATION ESTABLISHMENTS BY-LAW, 2022

To provide measures for regulating and controlling the use of land for the purposes of accommodation establishments in the area of jurisdiction of the Municipality; to provide requirements for an accommodation establishment certificate; to provide for conduct of the owners of the establishment; to provide for requirements of premises operated as an accommodation establishment; to provide for exclusions; to provide for the repeal of laws and savings; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the eThekweni Municipality has legislative and executive competence relating to municipal planning and land use management within its area of jurisdiction;

NOW THEREFORE the Municipal Council of the eThekweni Municipality, acting in terms of section 156 read with Schedule 4 Part B of the Constitution of the Republic of South Africa, 1996, 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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SCHEDULE: REPEAL OF BY-LAWS

CHAPTER 1 INTERPRETATION

Definitions

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

"accommodation establishment" means any premises in or upon which the business of providing overnight lodging, accommodation or shelter with or without meals and whether or not for reward, is conducted, including hostels but excluding –

- (a) a home for the aged which is registered as such in terms of the Older Persons Act;
- (b) premises controlled by the Department of Correctional Services or the South African Police Services for the purposes of accommodating persons arrested, detained or convicted, as the case may be, as contemplated in the Criminal Procedure Act.
- (c) residences; and
- (d) hotels;

"authorised official" means a person authorised to implement the provisions of this By-law, including but not limited to –

- (a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) municipal or metropolitan police officers as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and

(c) such employees, agents, delegated nominees, representatives and service providers 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;

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

"certificate" means an accommodation establishment certificate issued for the operation of an accommodation establishment as contemplated in section 5(1);

"certificate holder" means the person in whose name a certificate contemplated in section 5 has been issued;

"Criminal Procedure Act" means the Criminal Procedure Act, 1977 (Act No.51 of 1977);

"disaster" means a progressive or sudden, widespread or localised natural or human-caused occurrence which –

(a) causes or threatens to cause –

- (i) death, injury or disease;
- (ii) damage to property, infrastructure or the environment; or
- (iii) disruption of the life of a community; and

(b) has caused or necessitated the taking of urgent measures to accommodate people displaced by such occurrence;

"Facilities Regulations" means Facilities Regulations made in terms of the Occupational Health and Safety Act, published under GNR. 924 of 3 August 2004;

"Municipality" means the eThekweni Municipality, a category A Municipality as contemplated in section 155(1) of the Constitution;

"Municipal Council" means the eThekweni Municipal Council, a municipal council as contemplated in section 157(1) of the Constitution, and **"Council"** has a corresponding meaning;

"Municipal Manager" means a person appointed in terms of section 54A of the Municipal Systems Act, 2000 (Act No. 32 of 2000) as the head of administration of the Municipal Council;

"National Building Regulations" means the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

"nuisance" means –

- (a) any conduct or behaviour by any person;
- (b) the use, keeping, producing, by-producing, harbouring of, or otherwise dealing with or in, as the case may be, any item, substance, matter, material, equipment, tool, vegetation or animal; or
- (c) the causing, creating or permitting of any situation or condition,

in or on the premises, which causes or is likely to cause damage, annoyance, inconvenience or discomfort to the public or to any person, in the exercise of rights common to all or of any person;

"Occupational Health and Safety Act" means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

"Older Persons Act" means the Older Persons Act, 2006 (Act No.13 of 2006);

"overcrowding" refers to the situation where the number of people in a space exceeds the allowable numbers in terms of the certificate;

"owner" in respect of the premises, means the –

- (a) person in whose name the premises are registered with the Registry of Deeds;
- (b) the purchaser of the premises, whether or not the premises have been registered in the purchaser's name;
- (c) person in control of the premises;
- (d) usufructuary, if the premises are subject to a usufruct;
- (e) occupier, tenant or user of the premises;
- (f) authorised agent, assignee, curator, executor, judicial manager, legal representative, liquidator or trustee, as the case may be, of any person contemplated in paragraphs (a) to (d); or

(g) the person who receives or who is entitled to receive the benefit of the premises, if the Municipality is unable to establish the identity of any of the persons contemplated in paragraphs (a) to (e);

"premises" means the land and the buildings on it used or to be used as an accommodation establishment;

"prospective holder" means the new owner or operator of an accommodation establishment in whose name the certificate may be transferred as contemplated in section 6; and

"residence" means the premises on which any natural person dwells or is entitled to dwell more than on a one-off basis at any given time, whether or not such person has one or more such premises or shares the premises with another person or persons, which are occupied or available to be occupied, as a private dwelling or mainly for private dwelling purposes but excluding an accommodation establishment.

Interpretation

2. In the event of a conflict in interpretation between the English version of this By-law and a translated version, the English version prevails.

CHAPTER 2 OBJECTS OF BY-LAW

Objects of By-law

3. The objects of this By-law are to ensure that all accommodation establishments located within the area of jurisdiction of the Municipality are managed and operated in manner that –

- (a) is not harmful to the environment, health and safety of the occupants of such facilities and the public;
- (b) does not create a nuisance; and
- (c) does not violate or undermine the relevant laws relating to municipal planning and land use.

CHAPTER 3 APPLICATION

Application of By-Law

4.(1) This By-law applies within the entire area of jurisdiction of the Ethekwini Municipality and is binding on all persons to the extent applicable.

(2) This By-law does not affect or impede the applicability or enforceability of any By-law of the Municipality or any other law in respect of –

- (a) any premises contemplated in this By-law; or
- (b) the conduct of the owner or the person in charge or of any occupant of such premises.

(3) This By-law does not apply in respect of any premises used temporarily or on a one-off basis as accommodation or shelter for people during or as a result of a disaster.

CHAPTER 4 OPERATING AN ACCOMMODATION ESTABLISHMENT

Certificate to operate an accommodation establishment

5.(1) A person may not operate or conduct any business intended to operate as an accommodation establishment unless he or she is in possession of a valid certificate issued to him or her by the Municipality as contemplated in subsection (3), or a certificate contemplated in section 8(3).

(2) An application for a certificate contemplated in subsection (1) must be made to the Municipality on a prescribed form and upon payment of a prescribed fee, and must be accompanied by –

- (a) a locality plan;
- (b) a copy of the approved building plan in relation to the building plan application for an accommodation establishment which includes but is not limited to the following:

- (i) the dimensions and floor area of each room or other distinct part of the premises and the use to which it is to be put;
 - (ii) the maximum number of persons to be accommodated in each room intended for use as a bedroom as specified in the accommodation establishment certificate;
 - (iii) the location of cooking facilities, bathrooms, showers, toilets and laundry facilities;
 - (iv) the position of lighting and electrical socket outlet points, electric cooking appliances and electric water heaters, if applicable, including an electrical certificate of compliance issued by a registered electrician;
 - (v) the siting of hose reels, fire hydrants and portable fire extinguishers in compliance with the requirements of the National Building Regulations;
 - (vi) the location of emergency routes provided in accordance with the National Building Regulations for escape from the building in the event of fire, reflecting –
 - (aa) all doors, passages, ramps and stairs which are components of such routes and indicating their widths; and
 - (bb) the fire resistance of the elements constituting such components; and
 - (vii) the siting of all sanitary fixtures as contemplated in Part P of the National Building Regulations;
- (c) a copy of the approved special consent application drawing together with a decision notice including its conditions;
- (d) a copy of the approved fire plan read in relation to the building plan application;
- (e) a copy of the certificate of occupancy for the building plan application submitted for an accommodation establishment;
- (f) a copy of the written approval of the building plan application;
- (g) a copy of a written approval from Fire Department including an acceptable evacuation plan;
- (h) any other information or documentation which the Municipality may deem necessary for it to consider the application;

(3) The Municipality may grant the certificate or endorse the transfer thereof on the certificate as contemplated in section 6, if it is satisfied that the use or the proposed use of the premises is not likely to cause a nuisance and will not violate this By-law or any other law.

(4) A person who is at the date of commencement of this By-law, conducts a business contemplated in subsection (1) must, within six months of that date, apply for a certificate as contemplated in subsection (2).

(5) A person contemplated in subsection (4) may, prior to the expiration of the period contemplated in that subsection, apply in writing for an extension of within which he or she must comply with the provisions of the said subsection.

(6) If a person contemplated in subsection (4) fails to apply for an extension as contemplated in subsection (5), or if such application is refused, he or she must not continue to operate such business.

(7) The operation of an accommodation establishment must be conducted subject to any limitations, restrictions, terms and conditions that may be contained in the certificate.

(8) A certificate issued in terms of this section –

- (a) applies only to the premises specified in such certificate;
- (b) is not transferrable from one premises to another; and
- (c) may only be transferred from one person to another as contemplated in section 6, provided that the transferee will conduct an accommodation establishment of a similar nature as that of the certificate that was granted.

(9) A certificate issued as contemplated in subsection (3) must contain the following information:

- (a) the full names and surname of the certificate holder or full particulars of the person in control of the premises;
- (b) the identity number of the certificate holder or in the case of a juristic person the registration number of such person;
- (c) the position or capacity of the certificate holder in the business or operation concerned;
- (d) the street address and other relevant details regarding the location of the premises;
- (e) the description of the nature of the premises;
- (f) the provision of this By-law under which the certificate is issued;
- (g) the use or activity authorised in terms of the certificate;
- (h) the terms and conditions subject to which the certificate is issued, if any;
- (i) the date of issue of the certificate;
- (j) the period of validity of the certificate;

- (k) the applicable category that the accommodation establishment falls under; and
- (l) any other information which the Municipality deems necessary to be included in the certificate.

(10) The Municipality is not liable for any harm, damage or loss caused to or incurred by any person as a result of it granting or refusing to grant a certificate in terms of subsection (3).

(11) The granting of a certificate as contemplated in this section does not absolve the certificate holder from any accountability, responsibility or liability in law relating to the business or premises concerned.

(12) The certificate granted must be signed by an authorised official.

Transfer of certificate

6. (1) In the event that ownership of the business or premises for which a certificate has been issued in terms of this By-law has changed, the prospective holder must –

- (a) with the written consent of the certificate holder; and
- (b) within 60 days of such transfer or change of ownership,

apply for a transfer of certificate from the certificate holder to his or her name.

(2) An application contemplated in subsection (1) must be made to the Municipality on a prescribed form and subject to the payment of a prescribed fee.

(3) In considering an application contemplated in subsection (1), the Municipality may require any documentation or information from the prospective holder which it deems necessary and may request an inspection to be conducted for it to consider such application.

Suspension or revocation of certificate

7. (1) In the event that the Municipality is, on reasonable grounds, of the opinion that the premises are being used –

- (a) in such a way as to create a nuisance or that conditions constituting a nuisance have been or are being created; or
- (b) in contravention of the provisions of this By-law, any condition of the certificate, or any other law,

the Municipality may issue a compliance notice as contemplated in section 11 informing the certificate holder of its intention to revoke or suspend such certificate for a specified period if the certificate holder fails to comply with the notice within the period stipulated in such notice.

(2) If the certificate holder fails to take the necessary measures to comply with the notice as contemplated in subsection (1) within the period stipulated in such notice, the Municipality must suspend or revoke the certificate concerned without further warning to the certificate holder.

(3) A person whose certificate has been revoked or suspended in terms of subsection (2) must cease to operate as an accommodation establishment from the date of written notice of such suspension or revocation.

(4) The person to whom the certificate was issued must return the original certificate to the Municipality within five days of receipt of notice of suspension or revocation of the certificate as contemplated in subsection (3).

(5) The certificate holder may in writing make application to the Municipality on a prescribed form for the reinstatement of a certificate which has been suspended or revoked in terms of subsection (2), setting out the extent to which the conditions which led to such suspension or revocation have been rectified.

(6) In the event that the Municipality is satisfied that any condition that gave rise to the suspension or revocation of a certificate has been rectified or addressed as specified in subsection (5), it must reinstate such certificate by endorsement on the certificate concerned, and then cause the certificate to be returned to the certificate holder within five days of such reinstatement.

(7) Despite anything to the contrary in this section, the Municipality may irrevocably annul the certificate for a period of two years if the certificate has been suspended or revoked on three or more separate occasions as a result of non-compliance with the provisions of this By-law.

(8) Upon such certificate being revoked the certificate holder is to seek immediate alternate accommodation for all occupants.

Period of validity of certificate

8.(1) A certificate issued in terms of this By-law is valid for a period of four years from the date of its issue, unless it is revoked or suspended as contemplated in section 7 or by an order of court.

(2) If the certificate holder wishes to continue operating an accommodation establishment after the expiration of the period contemplated in subsection (1), he or she must apply for a new certificate in accordance with the provisions of subsection 5(2), at least 120 days before the date of expiry of his or her certificate.

(3) An application for a renewal as contemplated in subsection 5 (2) must be made to the Municipality on a prescribed form and must be accompanied by –

- (a) certified identity document of the certificate holder;
- (b) company registration document, if the holder is the juristic person;
- (c) an undertaking that the business activity has not changed; and
- (d) valid accommodation establishment certificate.

(4) In the event that the Municipality has not finalised processing the application contemplated in subsection (2) within 120 days of receiving the application, and the applicant is not the cause of the delay, the applicant's certificate that has expired is deemed to be valid until the Municipality finalises the application.

(5) A certificate that has not been renewed after six months of its expiry date shall be deemed invalid and the certificate holder must apply for a new certificate in accordance with the provisions of subsection 5(2).

Requirements for premises

9. (1) The premises must, at all times, be in a good structural condition outside and inside in accordance with approved building plans in terms of the National Building Regulations, and must –

- (a) be kept in a proper state of repair and in a hygienic condition; and
- (b) have walls or rationally designed structures, floors, roofs, doors and windows which are constructed and maintained in a manner that prevents wind, rain or dampness from entering the interior of the premises.

(2) The premises must be provided with –

- (a) adequate showers or baths; sanitary facilities in accordance with the National Building Regulations;
- (b) an adequate supply of hot and cold running potable water;
- (c) adequate sleeping facilities with a bed at least the size of a single bed for every person housed therein, manufactured of durable material and equipped with a suitable mattress;
- (d) adequate ventilation and lighting;
- (e) a separate room with bins or canvas laundry bags for the storage of dirty articles pending removal thereof to be laundered: Provided that if such articles are laundered on the premises, a separate approved washing, drying and ironing area equipped with the necessary facilities for this purpose must be provided;
- (f) a store-room for the storage of furniture and equipment, and a separate linen room with cupboards or shelves for the storage of clean bed and other linen, towels, blankets, pillows and other such articles;
- (g) adequate changing, ablution and other facilities for staff as contemplated in the Facilities Regulations; and
- (h) an adequate and suitable refuse bin area.

(3) If any room in the premises used for sleeping has one or more beds and is occupied by two or more occupants, –

- (a) each bed therein must be placed such that its sides are at least one meter away from any other bed; and
- (b) a separate locker must be provided for each occupant or shared cupboard for safeguarding his or her personal clothing and other belongings.

(4) If food is provided on the premises, the premises and the storage, preparation and provision of such food, must comply with the applicable provisions of the Municipality's By-laws dealing with public health and any other applicable law.

(5) Food may not be prepared in any part of the premises other than in an approved kitchen subject to the provisions or requirements of –

- (a) any zoning restrictions;
- (b) the National Building Regulations;
- (c) the Municipality's By-law dealing with fire;
- (d) the Municipality's By-law dealing with nuisances and public health; and
- (e) any other applicable law.

- (6) The owner or person in charge of the premises may not cause or allow –
- (a) a room used by persons for sleeping to be occupied by a greater number of persons than is contemplated in the certificate;
 - (b) a toilet, bathroom, passage, staircase, landing, cupboard, garage, stable, kitchen, storeroom, lean-to, shed, cellar, loft or temporary structures to be used as sleeping accommodation; and
 - (c) overcrowding in or on the premises at any time.
- (7) The owner or person in charge must make all the necessary arrangements and take all reasonable measures relating to the storage and disposal of waste accumulated on the premises in accordance with the Municipality's By-law dealing with waste removal.
- (8) The owner or the person in control of the premises must operate and keep the premises in accordance with the applicable provisions of this By-law, all the relevant Municipal By-laws, and any other applicable legislation.
- (9) Where there is a swimming pool on the premises the safety standards as per applicable legislation must be adhered to.

Display of certificate on premises

10. The owner or the person in charge of the premises must at all times display the original valid certificate issued in terms of this By-law in the office, reception or in the entrance area of the premises, in such a manner that it is clearly visible to any member of the public or authorised official upon entering such premises.

CHAPTER 5 ENFORCEMENT

Compliance notice

11.(1) The Municipality may enforce any provision of this By-law by issuing a 30 days compliance notice to the owner or the person in control of the premises who has

contravened any provision of this By-law, requiring such person to comply with the notice in a manner and within the time specified in the notice.

(2) If the owner or the person in control fails or refuses to comply with such notice, the Municipality may –

- (a) act as contemplated in section 7 of this By-law; or
- (b) cause such person to be prosecuted for an offence as contemplated in section 15 of this By-law.

(3) A compliance notice remains in force until it has been complied with and the Municipality has issued a compliance certificate stating that the Municipality is satisfied that the matter giving rise to the issue of the compliance notice has been resolved.

Powers of entry and inspection

12.(1) An authorised official may enter the premises at any reasonable time and –

- (a) serve any notice in terms of this By-law;
- (b) inspect such premises in order to ensure compliance with this By-law;
- (c) question the owner or the person in control on any information relevant to the inspection;
- (d) require the owner or the person in control to produce any document which the authorised official deems necessary to confirm compliance with this By-law;
- (e) take copies of any documentation or samples of any substance that is relevant to the inspection; and
- (f) take one or more photographs on any part of the premises for the purposes of evidence.

(2) An authorised official who removes any item other than the photocopies of any documentation as contemplated in subsection (1)(e) must –

- (a) issue a receipt for it to the person in charge of the premises; and
- (b) subject to the Criminal Procedure Act, return it as soon as practicable after achieving the purpose for which it was removed.

Municipal remedial work and recovery of costs

13. The Municipality may, to the extent practicable and necessary, act in order to avert or remedy any harm as a result of non-compliance with the provisions of this By-law or any

other applicable By-law or legislation and may recover any associated costs from the owner or the person in control of the premises.

Non-liability of Municipality

14. The Municipality is not liable for any harm, damage or loss suffered or incurred by any person as a result of it acting in terms of this By-law.

CHAPTER 6 OFFENCES AND PENALTIES

Offences

15.(1) A person commits an offence if he or she –

- (a) contravenes any provision of this By-law;
- (b) contravenes any condition, restriction or prohibition of a certificate issued in terms of this By-law;
- (c) fails to comply with a notice issued in terms of this By-law; or
- (d) threatens, resists, hinders, obstructs or uses foul, abusive or insulting language towards an authorised official in the exercise of any duty or function in terms of this By-law.

(2) A person commits a continuing offence if he or she continues with an offence after –

- (a) notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence; or
- (b) he or she has been convicted of such offence.

Penalties

16.(1) Any person who is convicted of an offence under this By-law is liable to –

- (a) a fine of an amount not exceeding R100 000;
- (b) imprisonment for a period not exceeding three years; or
- (c) both such fine and imprisonment contemplated in paragraphs (a) and (b).

(2) In the case of a continuing offence –

- (a) an additional fine of an amount not exceeding R1000; or
 - (b) imprisonment for a period not exceeding 10 days,
- for each day on which such offence continues or both such fine and imprisonment, will be imposed.

CHAPTER 7 GENERAL PROVISIONS

Appeals

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

(2) The Municipal Manager is obliged to promptly submit the appeal to the appropriate appeal authority.

(3) The appeal authority must commence with an appeal within six weeks from the date of lodgement and must decide the appeal within a reasonable period.

(4) The appeal authority must confirm, vary or revoke the decision, but no such revocation or variation of a decision may detract from any rights that may have accrued as a result of the decision.

(5) The appeal authority must furnish written reasons for its decision on all appeal matters.

(6) All appeals lodged are done so in terms of the Municipal Systems Act.

(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).

Delegations

- 18.**(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, councilors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councilor, 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 Municipal Systems Act, subject to the criteria set out in section 59(2) of said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the –

- (a) entity or person issuing the delegation or sub-delegation;
- (b) recipient of the delegation or sub-delegation; and
- (c) conditions attached to the delegation or sub-delegation.

Transitional Arrangement

19. (1) Any person who is in possession of a certificate regarding accommodation establishment granted by the Municipality or a local entity is deemed to have a valid accommodation establishments certificate.

(2) Any certificate deemed valid according to section 19(1) must be renewed accordingly after expiry of four years from the date of the effect of this by-law.

Repeal of laws

20. The laws mentioned in the first and second columns of the Schedule to this By-law are hereby repealed to the extent set out in the third column of the said Schedule.

Short title and commencement

21. This By-law is called the eThekweni Municipality: Accommodation Establishments By-law, 2022 and takes effect on the date of the publication thereof in the *Provincial Gazette*.

SCHEDULE: REPEAL OF BY-LAWS

<i>Repealed laws</i>	<i>Extent of repeal</i>	<i>Effective date of repeal</i>
City of Durban Accommodation Establishment By-laws, published under Municipal Notice No. 228 of 1993, in Provincial Gazette No. 4941 dated 17 December 1993	The whole	Date of commencement of this By-law
Township of Tongaat By- laws Relating to Chalets, published under Provincial Notice No. 54 of 1972, in Provincial Gazette No. 3659 dated 27 January 1972	The whole	Date of commencement of this By-law