

MUNICIPAL NOTICES • MUNISIPALE KENNISGEWINGS

MUNICIPAL NOTICE 539 OF 2025

ETHEKWINI MUNICIPALITY: BUSINESS LICENSING BY-LAW, 2024

NOTICE IS HEREBY GIVEN that the eThekwini Municipal Council has enacted, by way of resolution in terms of section 12 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), the eThekwini Municipality: Business Licensing By-law, 2024 contained hereunder.

Mr T. B Mbhele

City Manager

City Hall

Dr Pixley Kaseme Street

Durban

Dated:

ETHEKWINI MUNICIPALITY: BUSINESS LICENSING BY-LAW, 2024



Adopted by Council on the:

ETHEKWINI MUNICIPALITY: BUSINESS LICENSING BY-LAW, 2024

To provide measures for the supervision and control of the carrying on of certain businesses within the eThekweni Municipal area; to provide for licensing of undertakings, business and establishments that sell food to the public; to provide for licensing of establishments that provide for entertainment; to provide for establishments that offer certain health facilities; to provide for measures and control in hawking in meals; to provide for the application of business licences; to provide for the granting of business licences; to regulate the conduct of business licence holders; to prohibit certain activities or conduct in order to ensure and promote a healthy environment; to create offences and penalties and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the Municipality has competence in terms of Part B of Schedule 5 of the Constitution relating to the control of undertakings that sell liquor to the public and the licensing and control of undertakings that sell food to the public;

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

WHEREAS everyone has the right to an environment that is not harmful to their health or well-being in terms of Section 24(a) of the Constitution;

WHEREAS the Municipality in terms of Section 152(1)(d) of the Constitution, must promote a safe and healthy environment;

AND WHEREAS there is a need to develop legislation to deal with the prevention, control, minimisation or management of environmental and health impacts and nuisances arising or likely to arise directly or indirectly from premises from which certain businesses are conducted;

NOW THEREFORE The Municipal Council of the eThekweni Metropolitan Municipality, acting in terms of section 156 read with Part B of Schedule 5 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:

TABLE OF CONTENTS

CHAPTER 1 INTERPRETATION

1. Definitions
2. Interpretation of By-law
3. Objects of By-law
4. Application of By-law

CHAPTER 2 BUSINESS LICENSING

5. Application for a business and events licence
6. Authorisations or Approvals to accompany application
7. Circulation of a business licence application for comments
8. Decision of Municipality
9. Amendment of an approved business licence
10. Suspension or withdrawal of a business licence
11. Validity of a business licence
12. Renewal of a business licence
13. Revocation and termination of a licence
14. Transfer of a licence to a third party
15. Relocation of a business
16. Closure of a business
17. Business Licensing Committee
18. Disqualification of persons from applying for a business licence
19. Business licence registry

CHAPTER 3

COMPLIANCE AND ENFORCEMENT

- 20. Appointment of business licensing inspectors
- 21. Powers, duties and functions of business licensing inspectors
- 22. Compliance notices
- 23. Entry into premises
- 24. Presumptions

CHAPTER 4 OFFENCES AND PENALTIES

- 25. Offences
- 26. Penalties

CHAPTER 5 GENERAL PROVISIONS

- 27. Appeals
- 28. Delegations
- 29. Repeals and Savings
- 30. Transitional provisions
- 31. Short title and commencement

SCHEDULE 1: BUSINESSES IN RESPECT OF WHICH A LICENCE IS REQUIRED

SCHEDULE 2: BUSINESSES IN RESPECT OF WHICH A LICENCE IS NOT REQUIRED

CHAPTER 1 INTERPRETATION

Definitions

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

“applicable legislation” means any legislation, including any By-law of the Municipality, and any regulations or determinations made in terms of any legislation, dealing with or relating to the control, management or mitigation of health or environmental impacts associated with certain business activities in terms of this By-law, which includes, but is not limited to –

- (a) Businesses Act 71 of 1991;
- (b) Business Regulations, 1994;
- (c) Occupational Health and Safety Act 85 of 1993;
- (d) National Building Regulations and Standards Act 103 of 1977;
- (e) National Environmental Management Act 107 of 1998;
- (f) National Environment Management: Air Quality Act 39 of 2004;
- (g) National Environmental Management: Waste Act 59 of 2008;
- (h) National Health Act 61 of 2003;
- (i) Spatial Planning and Land Use Management Act 16 of 2013; and
- (j) KwaZulu-Natal Planning and Development Act 6 of 2008;

“applicant” means any person who has lodged an application with the Municipality for a business licence as required by schedule 1 of this by-law;

“asylum seeker” means a person who is seeking recognition as a refugee in the Republic;

“authorisations” for the purposes of this By-law means any approval, permission or permit granted by an organ of state or state-owned-company or any department of the Municipality in support of an application for a business licence;

“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;

“business” means selling, supplying, leasing, hiring out, repairing, servicing or rendering of, or other dealing in, goods, food or services, or the provision of any facilities, as a commercial activity of a continuing nature and includes any business referred to in Schedule 1, but excluding a business mentioned in Schedule 2;

“business licence” means a licence issued by the Municipality to an applicant to operate or conduct business activities referred to in Schedule 1 of this By-law;

“business licensing inspector” means, for the purposes of this By-law, any person in the employ of the Municipality who has been designated as a business licensing inspector and has been authorised to perform a duty as conferred in this By-law;

“business licence registry” means a register that is compiled by the Municipality of all issued business licences and registered businesses;

“business premises” means, in relation to a business, the premises upon, in or from which the business is or is to be carried on;

“carry on business” means any business operations being conducted on a business premises that has been licenced, which includes the opening or keeping open of any premises for such purpose;

“condition” means a condition imposed and specified on an approved business licence issued by the Municipality;

“Constitution” means the Constitution of the Republic of South Africa, 1996;

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

“entertainment business” means a place of entertainment that provides loud amplified music, food or alcohol for onsite consumption only;

“foodstuff” means foodstuff as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) as amended by Act No. 39 of 2007;

“goods” includes—

- (a) anything marketed for human consumption;
- (b) any tangible object not otherwise contemplated in paragraph (a), including any medium on which anything is or may be written or encoded;
- (c) any literature, music, photograph, motion picture, game, information, data, software, code or other intangible product written or encoded on any medium, or a licence to use such intangible product; or
- (d) gas, water and electricity,

but, excludes any legal interest in land or any other immovable property, other than an interest that falls within the definition of “service”;

“internal department” means any department, unit, section or cluster of eThekweni Municipality;

“licence holder” means a natural or juristic person who is in possession of an approved business licence issued by the Municipality to conduct or operate a business in terms of this By-law;

“Municipality” means eThekweni Metropolitan Municipality, a category A municipality as envisaged in terms of section 155(1) of the Constitution;

“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;

“Municipal Systems Act” means the Local Government: Municipal Systems Act 32 of 2000;

“nuisance” includes any activity, condition, situation, premises or thing which, on account of effluent, vapours, chemical effluvia, odours, noise, vibration, radiation, refuse, waste products, dirt, chemical or biochemical material, microbial infection, vermin, vegetation, overcrowding, lack of proper general hygiene, ventilation, lighting, design,

situation or on account of any other cause or practise whatsoever, causes or has the effect of or potential to cause damage, annoyance, inconvenience or discomfort to the public or the environment, or affect the well-being or reasonable comfort of a person or community;

“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);

“Perishable foodstuffs” means –

- (a) foodstuff on account of its composition, ingredients, moisture content or pH value;
- (b) foodstuff on account of its lack of preservatives and suitable packaging, is susceptible to an uninhibited increase in the microbes thereon or therein, if the foodstuff is kept within the temperature spectrum of 5°C to 60°C, and includes the perishable foodstuffs listed in Government Notice No. R.1183 of June 1990, but excludes the unprocessed fruit and vegetables; or
- (c) any foodstuff or category of foodstuffs declared by the Minister by notice in the *Official Gazette* to be a perishable foodstuff in the province concerned;

“person” includes any sphere of government, natural person or juristic person;

“premises” means any building or any other structure, together with the land on which it is situated and the adjoining land used in connection therewith and any land without buildings or tents, and includes any vehicle or conveyance;

“prescribed application fee” means a fee, charge or tariff that is determined and imposed by the Municipality on the submission of a business licence application or renewal;

“refugee” means a person who has been granted asylum in terms of the Refugees Act, 1998;

“Refugees Act” means the Refugees Act 130 of 1998; and

“the Act” means the Businesses Act, 1991 (Act No. 71 of 1991), including the Regulations to the Act.

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) regulate and control undertakings that sell food to the public for human consumption and provide for the licensing of the undertakings thereof;
- (b) regulate and control undertakings that provide for certain health facilities and entertainment facilities to the public;
- (c) provide measures for managing, controlling and minimising any impact on human and/or environmental health or any nuisance arising or likely to arise from any of the businesses as contemplated in this By-law; and
- (d) provide penalties for the breach of its provisions.

Application of By-law

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

CHAPTER 2 BUSINESS LICENSING

Application for a Business and Events licence

5. (1) No person may commence, carry on or continue to conduct business that requires a licence in terms of this By-law, without the prior written approval from the Municipality.

(2) Any person who intends on commencing, conducting or continuing to conduct a business within the area of jurisdiction of the Municipality must make a written application to the Municipality on the prescribed form.

(3) An application for a business licence must—

- (a) contain the details of the location or premises for which the applicant intends on operating or conducting a business at;
- (b) in the case of a business referred to in Item 3 of Schedule 1 of this By-law, the location at which the applicant conducts business; or
- (c) the location at which is intended to be used as a business premises for the preparation of food for delivery or collection, including any online or virtual food business.

(4) An application contemplated in subsection (2) must, where applicable, be accompanied by-

- (a) the landlord's consent in the case of a leased premises;
- (b) a signed lease agreement;
- (c) a certified copy of the applicant's identity document and that of the person in effective control of the business;
- (d) a certified copy of a resolution or authority, in the case of a juristic entity, authorising a person to act on behalf of a company, close corporation, trust, body corporate or homeowners association;
- (e) a certified copy of the company documents and proof that the company or close corporation has not been deregistered;
- (f) a certified copy of trust deed and letters of authority in case of a trust applying;
- (g) a valid tax clearance certificate issued by the South African Revenue Services;
- (h) a copy of the fingerprint reports for all entertainment businesses;
- (i) a management plan for events, concerts or any entertainment business
- (j) any required consents or special consents;
- (k) a copy of the title deed or municipal rates account;

- (l) any required authorisations, approvals or comments from municipal internal departments, organs of state or state-owned companies, such as the Municipality's Building Inspectorate, Fire and emergency services, Environmental Health, Metropolitan Police or Land Use Management Units;
 - (m) an electrical certificate of compliance in respect of accommodation establishments;
 - (n) an event's organisers original letter where an application relates to an event;
 - (o) a completed fire events form;
 - (p) proof of payment of a prescribed fee; and
 - (q) any other information or documents which may be required by the Municipality.
- (5) Where a person making an application for a business licence is a foreign national who—
- (a) has been granted a Refugee status or is an Asylum Seeker in terms of the Refugees Act must, in addition to the requirements in subsection (4), provide the Municipality with documents that relate to the status of that person as issued by the Department of Home Affairs or any other relevant government authority; or
 - (b) has entered the Republic legally and is in possession of a valid permit or business visa, must submit a valid permit or business visa together with their application.
- (6) A person who has submitted an application for a business licence to carry on a business referred to in Item 2 of Schedule 1 of this By-law must—
- (a) state whether he or she is or will be in actual and effective control of the business; or
 - (b) if another person will be so in control, the applicant must disclose in the application the full names, address, certified identity document and a fingerprints clearance of that person.
- (7) The Municipality must conduct an initial consultation with an applicant to advise the applicant on any issues relating to the intended business licence application and whether the type of business is regulated under this By-law or any other law.
- (8) The Municipality may conduct a verification of the applicant and may request the South African Police Services for a report stating particulars of all convictions, if any, recorded against an applicant concerned or against any person referred to in subsection (6)(b) of this section.

- (9) The Municipality must acknowledge receipt of an application —
- (a) by the affixing of an official Municipal stamp on the original and copy of the application in respect of hand delivered applications;
 - (b) in writing where applications are submitted by post; or
 - (c) electronically where such an application has been submitted via electronic means
- (10) An applicant must pay a prescribed, non-refundable, application fee to the Municipality prior to making an application and attach a copy of the receipt received from the Municipality or any other proof of payment, to the application.
- (11) An applicant may withdraw an application for whatever reason, in writing, at any time prior to a decision being made by the Municipality.
- (12) Where an application has been withdrawn or where it is deemed to have been abandoned by the applicant, a new application must be submitted to the Municipality, together with payment of the prescribed application fee.
- (13) Any business licence issued by the Municipality in terms of this By-law must be in a prescribed format and must include—
- (a) the category of licence granted;
 - (b) the name of the licence holder;
 - (c) the identity number or company registration number of the licence holder;
 - (d) passport number or asylum seeker number in the case of foreign national applicants;
 - (e) address of the business;
 - (f) any conditions imposed by the Municipality; and
 - (g) except in respect of a business licence contemplated in Item 3 of Schedule 1 of this By-law, the premises in respect of which the business licence was issued for.
- (14) An application to conduct any informal trading business must be made in accordance with the Municipality's by-laws dealing with informal trading and shall be regulated in terms of the provisions of that specific by-law insofar as it relates to informal trading.
- (15) Any person who intends on operating or conducting an accommodation establishment business must, in addition to the business licence, make an application in accordance with the Municipality's by-laws dealing with accommodation establishments.

Authorisations or Approvals to accompany application

6.(1) The Municipality may require an applicant to submit authorisations as mentioned in subsection (2) where it deems it necessary to do so.

(2) Where the Municipality has requested for authorisations obtainable from an external department or organ of state to be submitted, an applicant is required to obtain all authorisations from any such external department, organ of state or state owned enterprise for submission together with the business licence application.

(3) Once the application has been lodged together with the necessary authorisations, the Municipality shall circulate the application to all internal departments for comments as prescribed in section 7 of this By-law.

(4) A business licence application in respect of which the Municipality has requested additional information, documents, authorisations or required amendments must be deemed to have been refused if–

- (a) such additional information, documents or authorisations have not been submitted by the applicant; or
- (b) the required amendments have not been effected to the satisfaction of the Municipality, within the prescribed time period, after the date of request for additional information, documents or authorisations or required amendments was made.

Circulation of a business licence application for comments and authorisations

7.(1) Where applicable, if an organ of state or state owned company which has been requested by an applicant to provide comment on an application does not provide comment within 21 days permitted for that comment, it is deemed that the organ of state or state owned company has no objection to the application and the granting of the right applied for in the application.

(2) If an internal department which is requested to provide comment on an application does not provide comment within the 21 days permitted for that comment, it is deemed that the internal department has no objection to the application and the granting of the right applied for in the application.

(3) The Municipality must, where an internal department has made written comments on an application, consider the comments and request the applicant to make representations or submit further information or particulars where necessary.

(4) The applicant has 21 days from receipt of the comments contemplated in subsection (1) and (2) to lodge representations with the Municipality in writing.

(5) An applicant who fails to lodge a written response or make written representations within the 21 days is deemed to have abandoned the application.

Decision of Municipality

8.(1) The Municipality must, within 21 days from the date on which the Municipality has received all information, particulars or documentation required or requested, consider an application made in terms of section 5 and may grant or refuse approval of the application.

(2) Before granting an approval for the application in terms of subsection (1), the Municipality must be satisfied that—

- (a) the business premises, where applicable, complies with the requirements as set out in subsection (3);
- (b) the human and environmental impact of any business, conduct, or processes will be managed to the satisfaction of the municipality and in compliance with recognised statutory limits;
- (c) no objection to the application has been lodged or that, notwithstanding any objection, no nuisance is likely to arise or occur from an activity proposed by the applicant; and
- (d) any mitigation measures proposed by the applicant or mandatory mitigation measures in terms of any applicable legislation in respect of an activity proposed by the applicant, are sufficient for the purpose of preventing, minimising or managing any nuisance emanating from the business premises.

(3) The Municipality must, subject to the provisions in subsection (4), approve and issue a business licence which has been applied for unless —

- (a) in the case of a business referred to in Item 1 or item 2 of Schedule 1 of this By-law, the business premises do not comply with a requirement relating to —
 - (i) town planning regulations or zoning;
 - (ii) the safety or health of the public; or
 - (iii) any applicable law,

which applies to those premises;

(b) In the case of a business referred to in Item 1 or item 3 of Schedule 1 of this By-law, any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance, or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with any requirement in the applicable law relating to the health of the public.

(4) In considering an application for a business licence, the Municipality may —

(a) grant approval for the application on condition that—

(i) the business premises concerned must, before the business licence is issued, comply with a requirement contemplated in section 2(4)(a) of the Act or requirement stipulated by the Municipality and made known in writing to the applicant;

(b) issue the business licence subject to any condition specified therein in terms of which the licence holder must, in connection with the business premises or any such apparatus, equipment, storage space, working surface, structure, vehicle, conveyance, article or place —

- (i) comply with a specific requirement contemplated in subsection (3)(a); or
- (ii) within a specified period comply with such a requirement.

(5) The Municipality must notify—

(a) the applicant in writing, within 21 days, of the outcome of its decision; and

(b) within 21 days, any objector to the application of its decision and provide reasons thereof.

(6) The Municipality must, if it is unable to make a decision on the application within the time specified in subsection (1), notify the applicant in writing of any such delay and provide the reasons thereof, together with an indication as to the date when a decision on the application may be expected.

(7) The licence holder must display, once granted, the licence certificate at a place where it is visible to persons attending the business premises or to any authorised official or business licensing inspector of the Municipality.

(8) Where an application has been refused, the Municipality must notify the applicant as prescribed in subsection (5) and provide reasons for the refusal.

(9) An applicant whose application has been refused, may lodge an appeal in terms of this By-law, read with section 62 of the Municipal Systems Act.

Amendment of an approved business licence

9.(1) The Municipality may, on application by a licence holder—

- (a) amend a condition as imposed by the Municipality;
- (b) amend the trading name of the business where there has been a name change;
- (c) amend the name of the person that is an owner and in effective control of the business;
- (d) extend the period within which to comply with a requirement stipulated by the Municipality;
- (e) revoke a condition as imposed by the Municipality; or
- (f) indicate that a condition specified in the business licence has been complied with.

(2) The Municipality may, if it considers it necessary, on the ground of changed circumstances and on application in relation to a business or the relevant business premises, by way of endorsement on the business licence concerned —

- (a) amend a condition or impose a condition referred to in section 8(4)(b); and
- (b) require a licence holder in writing to produce his business licence to the Municipality.

(3) An application to amend must be on a prescribed form and must be submitted to the Municipality together with payment of a prescribed fee.

(4) The licence holder must attach, to the prescribed form, a copy of the payment receipt and a copy of the business licence to be amended or endorsed.

(5) The licence holder must provide the Municipality with any supporting documents that the Municipality may require for the amendment and endorsement of the business licence.

Suspension or withdrawal of a business licence

10.(1) The Municipality must notify the licence holder, in writing, within 14 days where it intends to suspend or withdraw a business licence.

(2) The Municipality must give the licence holder an opportunity to be make representations before suspending or withdrawing a business licence.

(3) The Municipality may, at any time, after giving the licence holder an opportunity to make representations, suspend or withdraw a licence —

(a) on the ground that the business premises does not comply with a requirement contemplated in section 5 of this by-law;

(b) on the ground that the licence holder has, in the opinion of the Municipality, conducted business other than what the business licence was approved for and has failed to remedy the conduct within 14 days after receipt of the written request to do so;

(c) in the case of a business referred to in Item 2 of Schedule 1 of this By-law, if the Municipality is satisfied that if the application had been made at that time for the business licence concerned, the application would have been refused by virtue of section 8 of this by-law.

(d) in the case of a business referred to in Item 1 or Item 3 of Schedule 1, on the ground that —

(i) any foodstuff sold by the licence holder does not comply with a requirement as prescribed by any relevant law or By-law relating to public health; or

(ii) any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs does not comply with a requirement of a law or By-law relating to public health.

(e) where the licence holder has been disqualified in terms of this By-law to hold a business licence; or

(f) where a business has been dormant for a period of 12 months from the date of approval.

(4) A licence holder who continues to carry on business, after being notified that his or her business licence has been withdrawn or suspended in terms of this section, shall be deemed to be carrying on business unlawfully and shall be guilty of an offence in terms of this By-law.

(5) The Municipality must specify the necessary steps to be taken by the licence holder to enable the suspension, as contemplated in subsection (4) above, to be lifted and must state the period within which such steps must be taken.

(6) The Municipality may withdraw the business licence if a licence holder fails to fulfil the requirements of a notice as contemplated in subsection (5) above, to the satisfaction of the Municipality.

(7) A person whose business licence has been withdrawn must not re-apply for a business licence of the same category or in respect of the same premises, whichever is applicable, unless the circumstances upon which such withdrawal were based, have been remedied or resolved to the satisfaction of the Municipality.

Validity of Business licence

11.(1) A business licence issued in terms of this By-law shall be valid for a period not exceeding a period of 1 year from date of issue.

(2) A business licence shall remain valid for the period contemplated in subsection (1) unless—

- (a) it is not renewed within the three (3) month grace period granted by the Municipality after the expiry of the business licence;
- (b) the licence holder of the business licence becomes deceased in case of a sole proprietor;
- (c) the licence holder becomes sequestrated;
- (d) the licence holder becomes insolvent; or
- (e) the business is deregistered, liquidated or dissolved.

(3) Any person who has been found to have misrepresented any information on an application, after a business licence has been issued, shall have the validity of the licence nullified and immediately revoked in terms of section 13(1)(c).

(4) Any prescribed application fee that has already been paid by the applicant for issuing of the business licence shall be forfeited as a result of any misrepresentation.

Renewal of Business Licence

12.(1) A licence holder must, at least 60 days prior to the expiry of the licence, submit an application for renewal of the business licence to the Municipality on the prescribed form.

(2) The application for renewal must be submitted together with payment of a prescribed renewal fee as determined by the Municipality.

(3) An application for renewal referred to in subsection (2) must be accompanied by—

- (a) a certified identity document of the licence holder;

- (b) company registration documents and resolutions where the licence holder is a juristic person;
- (c) a confirmation, in writing, that the business activities have not changed; and
- (d) a certified copy of a valid business licence.

(4) A licence holder who fails to renew their business licence within the prescribed period or on expiry thereof shall—

- (a) have their licence revoked or terminated as contemplated in section 13 of this by-law; and
- (b) be liable to the payment of a late renewal fee that may be prescribed by the Municipality.

(5) Where a business licence has been revoked, terminated or has lapsed, a new business licence must be applied for in accordance with section 5 of this by-law.

(6) Where an application to re-apply for a business licence is submitted to the Municipality, all outstanding fees, penalties or charges must be paid before the application may be considered by the Municipality.

Revocation and Termination of a business licence

13.(1) The Municipality may, on reasonable notice to the licence holder and after giving the licence holder an opportunity to make written representations, revoke or terminate a business licence if the licence holder has—

- (a) breached any condition attached to the business licence;
- (b) breached the provisions of this By-law or any other law;
- (c) provided the Municipality with incorrect information;
- (d) been disqualified in terms of this By-law or any other law;
- (e) failed to renew the business license within the prescribed period; or
- (f) traded in goods or services not covered by the business licence.

(2) Where a business licence has been revoked or terminated in terms of subsection (1), a person must re-apply for the business licence and in addition make representations to the Municipality on why the application should be considered and whether the reasons for the revocation or termination have been rectified.

Transfer of business licence to a third party

14.(1) A licence holder who intends on selling their business and transferring a business licence to another person must, pursuant to such sale, transfer the business licence within 60 days.

(2) The prospective licence holder must submit an application to the Municipality on the prescribed form, together with payment of a prescribed fee.

(3) The transfer of a business licence from one person to another is only permitted where the new owner of the business will be conducting the same business operations as it was applied for and on the same premises that the business licence applies to: Provided that no substantial changes are made that would have otherwise rendered the business licence invalid.

(4) The prospective licence holder must not be disqualified to conduct or carry on any business in terms of this By-law or any other applicable legislation.

(5) Where the licence holder transfers a business licence to the prospective holder, the provisions of section 5 of this by-law must be complied with by the prospective holder.

(6) The Municipality must consider the application to transfer a licence and make a decision whether to approve or refuse the application, within 21 days from receipt of the application.

(7) Where an application to transfer is approved by the Municipality, a certificate of transfer, together with an amended business licence, must be issued containing the name of the prospective holder, identity number and any conditions that may be imposed by the Municipality.

Relocation of a business

15.(1) A licence holder who intends on relocating from the licensed premises to another premises must make a new application in accordance with section 5 of this By-law to the Municipality in respect of the new business premises.

(2) The Municipality may request the applicant, in accordance with section 6, to obtain all relevant external authorisations from any other organ of state or state owned company for the intended business premises and submit all authorisations together with the application to the Municipality.

(3) The Municipality must consider the application in terms of section 5 of this by-law and must make a determination on whether to approve or refuse the business licence application after it has circulated the application for comments and internal authorisations.

Closure of a business

16.(1) Any person who intends on closing down or ceasing to operate a business for which a valid business licence has been issued, must notify the Municipality in writing of such intended closure.

(2) The notice referred to in subsection (1) must be communicated to the Municipality within one (1) month of the closure of the business either by electronic mail, hand delivery or by post.

(3) The Municipality must note the intended closure on its records and the licence holder must deliver or surrender the original business licence to the Municipality for it to be endorsed as cancelled.

(4) Where a person who has had their business licence cancelled in terms of subsection (3) intends on recommencing with their business operations again in the future, must make a new application in terms of this By-law.

Business licensing committee

17.(1) The Municipality may establish a business licensing committee which shall be responsible for the consideration of all business licence applications received by the Municipality.

(2) The committee shall ensure that there is an effective and efficient application process in terms of this By-law and any other legislation which may have an impact on business licensing.

(3) The Municipality must develop terms of reference for the committee to regulate the conduct, duties and powers of the committee.

(4) The committee shall not be considered as a separate legal entity or juristic entity from the Municipality but shall have an advisory role in the considering of business license applications and to make recommendations to the Municipality.

(5) The decision whether to approve or refuse a license application shall be made by the official who has been delegated with such powers in terms of the Municipality's system of delegations, in consultation with the Business Licensing Committee.

Disqualification of persons from applying for a business licence

18.(1) The Municipality may not issue a business licence to any person who—

- (a) is considered to be an illegal foreign national;
- (b) is a prohibited or undesirable person as defined in the Immigration Act 13 of 2002 or any other applicable legislation;
- (c) has been declared as an unrehabilitated insolvent;
- (d) has been sequestered;
- (e) in the case of a juristic entity, has been liquidated or deregistered by the Companies and Intellectual Property Commission;
- (f) has, within the preceding 2 years of lodging an application, been found guilty of an offence or has been convicted of offence in terms of this By-law or any other law which resulted in the revocation of a business licence;
- (g) is a minor at the date of lodging of the application; or
- (h) has been declared to be mentally unfit in terms of the Mental Health Care Act 17 of 2002.

Business licence registry

19.(1) The Municipality must maintain and keep a business licence registry that records all active and licenced businesses within its area of jurisdiction which must contain –

- (a) details of the licence holder or owner of the business;
- (b) address of the business premises concerned;
- (c) business licence issue date and expiry date;
- (d) business licence number;
- (e) nature or type of business conducted; and
- (f) any compliance reports or conditions in respect of the licence.

CHAPTER 3

COMPLIANCE AND ENFORCEMENT

Appointment of business licensing inspectors

20. (1) The Municipality may designate officials, as it sees fit, as business licensing inspectors to ensure compliance with this By-law.

(2) The Municipality must issue each business licensing inspector with a written designation or appointment in the prescribed form.

(3) When a business licensing inspector performs any function of an inspector in terms of this By-law, the inspector—

- (a) must on request produce his or her written designation or appointment; and
- (b) may not be a person having a direct or indirect personal or private interest in the matter to be investigated.

Powers, duties and functions of business licensing inspectors and authorised officials

21. (1) An inspector appointed in terms of section 20 or authorised official, in relation to any business which is licensed in terms of this By-law which he or she has reasonable grounds for believing that the business requires to be licensed in terms of this By-law or when directed to do so by the Municipality —

(a) must at all reasonable times have access to any premises and may inspect the same and make such investigations and enquiries as are necessary to determine whether any provisions of this By-law, any applicable legislation or any conditions of any business licence issued have been contravened;

(b) may require the licence holder or any person who is or appears to be in control of such a business to produce for inspection—

- (i) a valid business licence issued in terms of this By-law; and
- (ii) such other documents or records, as far as they relate to the business licence and business operations, which are reasonably necessary for the investigation being conducted;

(c) may make copies of or extract from such licences, documents or records as contemplated in paragraph (b) and demand explanations of entries therein; and

(d) may take possession of any licence, document or record if in his opinion it could furnish evidence of a contravention of this By-law and any other applicable law: Provided that the inspector shall, upon taking possession of such documents, issue a compliance notice for the contravention and state that such items were seized.

Compliance notices

22.(1) A business licensing inspector may issue a compliance notice in the prescribed form if he or she has reasonable grounds to believe that a person has not complied—

- (a) with any provision of this By-law; or
- (b) with a condition of the business licence issued in terms of this By-law.

(2) A compliance notice must include—

- (a) details of the conduct, activity, condition or situation constituting non-compliance;
- (b) the steps the person must take to comply with this By-law or conditions of the business licence;
- (c) the time period within which those steps must be taken; and
- (d) the procedure to be followed in lodging an objection to the compliance notice.

(3) The Municipality may vary or amend a compliance notice and extend the period within which the person must comply with the notice.

(4) A person who receives a compliance notice must comply with that notice within 14 days of issue of the notice, unless the Municipality has, on good cause shown, agreed to suspend the operation of the compliance notice.

(5) If a person fails to take steps stipulated in the compliance notice within the time period stipulated in subsection (4), the Municipality may –

- (a) in the case of a person who is violating any condition of a business licence—
 - (i) by notice in writing, suspend or withdraw any business licence granted in terms of this By-law;
 - (ii) cause the responsible person to be prosecuted for an offence in terms of this By-law; and
 - (iii) cause the business or establishment to close down any activity or process which constitutes a violation of the business licence; or
- (b) in the case of a person who has not been issued with a business licence—
 - (i) advise the person to suspend or cease with the illegal activities until the business complies with all the provisions of this by-law;
 - (ii) cause the business to close down any activity or process which constitutes an offence in terms of this By-law; and
 - (iii) cause the responsible person to be prosecuted for an offence in terms of this By-law.

(6) Where the Municipality believes that there is imminent or irreversible threat of harm to the health, safety or well-being of any person or the public as a result of any business carried out on premises as contemplated in this By-law, the Municipality may take urgent action to remedy the situation and dispense with the requirements of subsections (1) to (5).

(7) A compliance notice remains in force until it has been complied with to the satisfaction of the Municipality.

(8) Should a person fail to comply, or inadequately comply with the notice, or if urgent action is needed as contemplated in subsection (6), the Municipality may take reasonable measures to remedy the situation and may recover all costs incurred from the responsible person.

(9) No person shall be entitled to compensation for any loss or damage arising out of any *bona fide* action or decision by the Municipality or any authorised official in terms of this By-law.

Entry into premises

23.(1) An authorised official business licensing inspector may enter any premises if he or she suspects on reasonable grounds that any condition or situation occurring on any such premises constitutes a violation of this By-law and causes or is likely to cause a nuisance or a danger to the health of the public.

(2) An authorised official may enter any premises at anytime during the normal trading hours of the business and—

(a) conduct any search, inspection, audit or monitoring with or without appointment, in order to ensure compliance with this By-law;

(b) if qualified to do so, take samples of any substance that is relevant to the search, audit, monitoring or inspection;

(c) question any person who he or she believes may have information relevant to the search, inspection, audit, monitoring or any purpose which is connected with this By-law;

(d) require the person in charge of such premises to produce, for inspection or for the purpose of obtaining copies or extracts of any document that such person is required to maintain in terms of any law or any other document which may assist the authorised official to obtain the required information;

(e) examine any books, documents, recordings or electronic data and take extracts from such books, documents recordings or electronic data; and

(f) deliver any notice in terms of this By-law.

(3) An authorised official seeking entry into premises in terms of subsection (1) must, immediately before entering the premises in question—

(a) audibly announce that he or she is authorised to enter the premises and demand admission to the premises; and

(b) notify the person in control of the premises of the purpose of the entry, unless there are reasonable grounds to believe that such announcement or notification might defeat the purpose of the search.

(4) An authorised official who is performing a function under this By-law may ask any question or request any information or documentation which might assist him or her to carry out his or her duties in terms of this By-law.

Presumptions

24.(1) Any person charged with an offence in terms of this by-law who is—

a) alone or jointly with another person, responsible for or in control of a business or event that requires a licence under this by-law, is deemed, until the contrary is proven, to have knowingly operated or conducted an unlawful business or event or to have allowed such business operations to be so conducted;

b) found on the business premises conducting business operations, managing, or in control of the business premises shall be deemed, until the contrary is proven, as the owner of the of the business; and

c) the owner of the building or section of the building which the unlawful business activities or operations are being conducted shall be deemed, unless the contrary is proven, to have knowingly allowed the unlawful business activities or activities to take place.

CHAPTER 4 OFFENCES AND PENALTIES

Offences

25.(1) A person commits an offence if he or she—

- (a) contravenes or fails to comply with any provision of this By-law or condition imposed on the business licence;
- (b) contravenes or fails to comply with any order or notice lawfully issued under this By-law.
- (c) obstructs or hinders in any manner whatsoever an authorised official who is performing a function under this By-law;
- (d) refuses to provide to an authorised official such information as is required to allow an authorised official to perform a function in terms of this By-law;
- (e) knowingly gives false or misleading information to an authorised official; and
- (f) impersonates an authorised official;

(2) A person commits a continuing offence if they continue with an offence after notice has been served on them in terms of this By-law requiring them to cease committing such offence, or after they have been convicted of such offence.

Penalties

26.(1) Any person who is convicted of an offence under this By-law shall be liable to a fine of an amount not exceeding R200 000, or to imprisonment for a period not exceeding two (2) years, or to both such fine and imprisonment.

(2) In the case of a continuing offence, an additional fine of an amount not exceeding R1000 or 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 5 GENERAL PROVISIONS

Appeals

27.(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 section 62 of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons thereof to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must act in accordance with the provisions outlined in section 62 of the Municipal Systems Act, in response to the appeal.

Delegations

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

(3) Any delegation contemplated in this section must be recorded in the System 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.

Repeals and savings

29. All By-laws that are operational within the jurisdictional area of the Municipality before the coming into effect of this By-law, dealing with the licensing or regulation of businesses are hereby repealed to the extent that they apply to the licensing and regulation of businesses.

Transitional Provisions

30. This By-law shall apply concurrently with the Businesses Act and if there is any provision between the Act and the By-law that is inconsistent, then the Act shall prevail.

Short title and commencement

31. This By-law is called the eThekweni Municipality: Business Licensing By-law, 2024 and takes effect on the date of publication in the *Provincial Gazette*.

**SCHEDULE 1
BUSINESSES IN RESPECT OF WHICH A LICENCE IS REQUIRED**

**ITEM1: FOOD LICENCE
SALE OR SUPPLY OF GOODS FOR HUMAN CONSUMPTION**

BUSINESSES THAT SELL AND SUPPLY GOODS FOR HUMAN CONSUMPTION	
<ul style="list-style-type: none"> • Abattoirs • Slaughterhouses • Butchery • Shisanyama • Convenience Stores (includes petrol station stores) • Tuck-Shops (residential, erected structure or shipping containers) • Meat and food Deli's • Food Kiosk • Food truck • Restaurants • Pop-Up Restaurants • Food Catering Services • Bed & Breakfast • Hotel • Airbnb • Café • Eatery 	<ul style="list-style-type: none"> • Bakery • Supermarket / Grocery Store • Spice store/establishment • Ice-cream parlours • Food Stalls • Liquor establishment (where food is offered for sale) • Fish Market • Fruit & Vegetable Market <p style="margin-top: 20px;">*Any <u>OTHER</u> business or persons that may sell or supply goods for human consumption</p>

ITEM 2

PROVISION OF CERTAIN TYPES OF HEALTH FACILITIES, LIFESTYLE FACILITIES OR ENTERTAINMENT

CATEGORY 3 BUSINESS PROVISION OF HEALTH AND LIFESTYLE FACILITIES	CATEGORY 4 BUSINESS ENTERTAINMENT FACILITIES
<ul style="list-style-type: none"> - Health Spa or any other Spa - Massage Parlour - Saunas - Infrared Treatment facilities - Beauty Salon - Hair Salon - Barbershop - Gymnasium (Gym) - Turkish Baths or Health Baths facilities 	<ul style="list-style-type: none"> - Electronic or Video Gaming facilities - Arcade Gaming facilities - Snooker or Billiard facilities - Any recreation or amusement facilities - Night Club, Entertainment Lounge, Disco - Cinema or Movie Theatre - Adult Entertainment facilities (including adult shops and strip clubs)

ITEM 3:

HAWKING IN MEALS OR PERISHABLE FOODSTUFFS

(1) The carrying on of business, whether as principal, employee or agent, by selling any foodstuff in the form of meals or any perishable foodstuff—

- (a) which is conveyed from place to place, whether by vehicle or otherwise;
- (b) on a public road or at any other place accessible to the public; or
- (c) in, on or from a movable structure or stationary vehicle,

unless the business is covered by a licence for a business referred to in item 1 of this Schedule.

(2) For the purposes of subitem (1) “perishable foodstuff” means any foodstuff or category of foodstuffs declared in the Government Gazette to be a perishable foodstuff.

SCHEDULE 2

BUSINESSES EXCLUDED FROM BUSINESS REFERRED TO IN SCHEDULE 1

1. A business which is carried on by the State or a local authority.
2. A business which is carried on by a charitable, religious, educational, cultural or agricultural association, organization or institution of a public nature, if all profits derived from the business are devoted entirely to the purposes of that or any other such association, organization or institution.
3. In the case of a business referred to in item 1 of Schedule 1, such a business which is carried on—
 - (a) by a social, sports or recreation club which is a non-proprietary club and restricts the business to the sale or supply to its members and their guests of foodstuffs for consumption on or in the business premises;
 - (b) by or on behalf of an employer for an employee as such of the employer.
4. A business referred to in item 1 of Schedule 1, if the meals concerned are prepared and sold in a private dwelling.
5. In the case of a business referred to in item 1 of Schedule 1, the sale of a perishable foodstuff referred to in that item, by a person who belongs to a category of persons which the Minister, in the relevant notice under item 1 of that Schedule, has exempted from the provisions of the Act, in relation to the perishable foodstuff concerned.