

MUNICIPAL NOTICE 339 OF 2023

PUBLIC NOTICE

ETHEKWINI MUNICIPALITY:

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: Municipal Public Health By-law 2022 and the eThekwini Municipality: Food, Milk and Milk Products By-law 2022.

Mr Mbhele
City Manager
City Hall
Dr Pixley Kaseme Street
Durban
Dated:

ETHEKWINI MUNICIPALITY: FOOD, MILK AND MILK PRODUCTS BY-LAW, 2022



Adopted by Council on: 28 February 2023

FOOD, MILK AND MILK PRODUCTS BY-LAW

To provide measures for managing and controlling food, milk and milk products; to prohibit certain activities or conduct in order to promote a healthy and safe environment and ensuring that foodstuff is safe, wholesome and fit for human consumption; to provide for the repeal of laws and savings; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the Municipality has competence in terms of 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;

WHEREAS the Municipality has competence in terms of Part B of Schedule 4 of the Constitution relating to matters such as air pollution and municipal health services, and has the competence in terms of Part B of Schedule 5 of the Constitution in respect of the control of public nuisances;

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 has as one of its objects in terms of Section 152(1)(d) of the Constitution, the promotion of a safe and healthy environment;

AND WHEREAS there is need to develop legislation to deal with the prevention or minimisation of municipal health nuisances within the area of jurisdiction of the Municipality;

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, 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
INTERPRETATIONS**

Definitions

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

"animal" means horse, pony, mule, donkey, cattle, pig, sheep, goat, camel, reptile, dog, cat or other domestic animal, indigenous animal, wild animal, exotic animal, poultry and birds, but excludes marine fauna;

"approved premises" means a premises suitably equipped, prepared and maintained in line with legislation and regulations for its specific purpose;

"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;

"best available method" means, in relation to food, a method which is practicable and necessary for the protection of food against contamination or spoilage, having due regard to local conditions and circumstances whether at or on the food premises or elsewhere; the prevailing extent of established practice and the financial implications thereof;

"best-before-date" or **"sell-by-date"** or **"use-by-date"** means, in relation to food, the date indicating the end of the period under any stated storage conditions as specified on the label by the manufacturer during which the product will remain fully marketable, edible and safe for consumption and will retain any specific qualities for which tacit or express claims have been made;

"clean" means free of any soil, food residues, dust, dirt, dung, impurity, grease or other objectionable matter or contamination to the extent that a state of hygiene is attained and "cleaning", "keep clean" and "cleaned" has a similar meaning;

"communicable disease" means a disease resulting from an infection due to pathogenic agents or toxins generated following the direct or indirect transmission of the agents from the source to the host;

"container" means anything in which or with which food is manufactured, prepared, processed, stored, served, displayed, packed, wrapped, kept or transported and with which food is in direct contact;

"core temperature" means the temperature reading taken at the estimated centre of the food;

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

"dwelling" means any habitable house, room, shed, shelter, boat, structure or any part of which is used or appears to be intended for use by any human being for sleeping or in which a human being dwells or sleeps and "room" has a corresponding meaning;

“edible fats and oils” means foodstuffs composed of glycerides of fatty acids of vegetable or animal origin and in which other naturally-occurring lipids such as phosphatides of unsaponifiable constituents and free fatty acids may be present;

“food” means a foodstuff intended for human consumption as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 Act, excluding food referred to in regulation 14(5), and raw milk when produced and handled in a milking shed in terms of the Regulations Relating to Hygiene Requirements for Milking Sheds, the Transport of Milk and Related Matters, published in Government Notice No. R.961 of 23 November 2012;

“foodstuff” means any article or substance (except a medicine as defined in the Medicines and Related Substances Act, 1965 (Act No.101 of 1965) ordinarily eaten or drunk by a person or purporting to be suitable, or manufactured or sold, for human consumption, and includes any part or ingredient of any such article or substance, or any substance used or intended or destined to be used as a part or ingredient of any such article or substance;

“Foodstuffs, Cosmetics and Disinfectants Act” means the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

“food premises” means a building, structure, stall or other similar structure, and includes a vehicle, stand or place used for or in connection with the handling of food;

“food safety risk” means the known or potential adverse health effects resulting from human exposure to food borne hazards;

“food vending machine” means any mechanical device, whether attended or not, by means of which foodstuffs are sold;

“good manufacturing practice” means, in relation to food, a method of manufacture or handling or a procedure employed, taking into account the principles of hygiene so that food cannot be contaminated or spoiled during the manufacturing process;

“grease interceptor” means a grease trap designed to cool down incoming hot waste water to below 30 °C to enable grease and fat to separate from the water and to solidify or be collected on the surface level of the waste water, and that prevents grease and fat from entering a sewer;

"heat treatment" means a process used to destroy microorganisms, both pathogenic and spoilage, to ensure that the milk is safe; and it includes pasteurisation, sterilisation and ultra-heat treatment;

"holder" means the person in whose name any permit, certificate or authorisation has been issued in terms of this By-law;

"milk" means an opaque white fluid, secreted by lactating female mammals for the nourishment of their young, and excludes sterilised milk, pasteurised milk, or milk processed in any other manner or milk products;

"milk processor" means any person who receives milk or milk products from a farmer or another milk processor for the purpose of pasteurisation or other processing and re-sale after such processing and includes a manufacturer of ice-cream: Provided that a milk processor may at the same time, be a milk producer;

"milk producer" means a farmer or any person who owns or controls one or more animals from which milk is produced, who supplies milk or milk products to a milk processor for the purpose of pasteurisation or similar processing for human consumption: Provided that a milk producer may at the same time, be a milk dealer;

"milk dealer" means any person, other than a milk producer or milk supplier, who, in the course of business, sells milk or milk products for human consumption;

"milk parlour" means any milk shed in which a succession of cows is milked by mechanical means and which is used exclusively for such milking;

"milk shed" means any building or structure or any part of such building or structure used for the accommodation of cows whilst they are being milked;

"motor vehicle" means any self-propelled vehicle having an engine or motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by means of such engine or motor for the purposes of transportation on any road, of one or more persons or any material, item, substance or object –

- (a) including a trailer, motor-bike, quad-bike, earth-moving or earth-working vehicle; and

- (b) excluding any vehicle which is controlled by a pedestrian, or any vehicle with a mass not exceeding 230 kilograms which is specially designed and constructed solely for mobility of any person suffering from some physical defect or disability;

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

"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;

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

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

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

"occupier" means any person who occupies any premises or part thereof, regardless of the title under which he or she occupies, and includes –

- (a) any person in actual occupation of those premises;
- (b) any person legally entitled to occupy those premises;
- (c) in the case of those premises being subdivided and let to lodgers or various tenants, the person receiving the rent payable by such lodgers or tenants whether on the person's own account or as agent for any person entitled thereto or interested therein;
- (d) any person having the charge or management of those premises, and includes the agent of any such person when the person is absent from the Republic of South Africa or his or her whereabouts are unknown; or
- (e) the owner of the premises;

"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 (e); or
- (g) the person who receives or is 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 (f);

"pasteurisation" means the heat treatment process that destroys pathogenic microorganisms;

"person" includes any sphere of government, natural person and juristic person;

"perishable food" means any foodstuff which on account of its nature, composition, ingredients, moisture content, pH value, packaging or lack of preservatives is susceptible to decomposition or deterioration at ordinary temperatures, and includes but not limited to, meat, fish, fish spawn, molluscs, crustaceans, fruit and vegetables, and perishable foodstuffs as declared in terms of regulation 15(1)(f) of the *Perishable Foodstuffs Regulations*, published under GN R1183 in GG 12497 of 1 June 1990 as amended from time to time;

"premises" means any building, tent or any other structure, together with the land on which such building, tent or other structure is situated, and the adjoining land used in connection therewith and any land without building, tent or any other structure; and includes any motor vehicle, conveyance, ship or boat, whether stationary or not, but only to the extent that anything contemplated or prohibited in this By-law is housed, harboured or carried on in or on such motor vehicle, conveyance, ship or boat;

"pre-packed" means, in respect of food, food which –

- (a) before it is presented for sale or for serving, has been packed in a dust-proof and liquid-proof container that protects the product therein against contamination under normal handling conditions; and
- (b) has been so packed or sealed that the food cannot be removed from its container without the stopper or lid or similar seal being removed or without the wrapping, container or seal being broken or damaged;

“ready to consume food” means perishable food which may be consumed without having to undergo a further process to make it consumable and ready-to-eat food has a similar meaning;

“residence” means 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 dwelling or mainly for dwelling purposes, but excluding an accommodation establishment;

“rodent proof” means to ensure that rodents or mice do not enter a building or premises;

“scullery” means a room or section reserved for cleaning and storing dishes and cooking utensils;

“South African Police Service Act” means the South African Police Services Act, 1995 (Act No. 68 of 1995);

“sterilise” or “sterilisation” means, in relation to milk or milk products, the heat treatment above 100 degrees Celsius, after packing, of dairy product to such extent that it becomes resistant to microbiological decay for an extended period of at least 14 days if kept at a temperature of 13 degrees Celsius;

“Thermometer” means an apparatus which can give the temperature readings referred to in the Regulations, the combined accuracy and temperature-sensitive sensor of which is approximately 1 degree °Celsius;

“unsound” means, in relation to food, food that is unwholesome, sick, polluted, infected, contaminated, decayed or spoiled, or unfit for human consumption for any reason whatsoever;

“vehicle” means, in relation to food, a motor vehicle, train, trolley, wagon, cart, bicycle, sledge, truck, boat, ship or aeroplane, and includes any other craft, vehicle or conveyance used in the handling or transportation of such food;

“wash room” means a room or part of a room used for the cleansing and sanitising of milk vessels, utensils and apparatus;

"water resource" means a river, spring, or natural channel in which water flows regularly or intermittently, a wetland, lake or dam into which or from which water flows, surface water, an estuary or aquifer and includes any borehole, structure, earthwork or equipment installed or used for or in connection with storage, distribution, provision or use of water; and

"work area" or "work room" means, in relation to laundry or dry-cleaners premises –

- (a) those parts of the premises in which the cleaning and drying machines and ironing presses are operated; and –
- (b) those parts in which articles which have been cleaned are hung or kept or stored to be aired,

but excluding those parts of the premises used as change rooms, storerooms, offices and those parts used for the purpose of receiving or collecting articles for dry-cleaning or for return or delivery of articles which have been cleaned to the public.

Interpretation

2. If there is a conflict of 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–

- (a) provide legal and administrative measures necessary for the Municipality to discharge its municipal health obligations in terms of Section 152(1)(d) of the Constitution;
- (b) regulate certain activities, conduct, processes, or trades which, owing to their nature are likely to pose a risk to the health and safety of any person or persons within the area of jurisdiction of the Municipality; and
- (c) provide measures for managing and controlling and providing a safe supply of food, milk and milk products within the area of jurisdiction of the Municipality.

CHAPTER 3 APPLICATION

Application of By-law

4. This By-law–

- (a) applies to all areas which fall under the jurisdiction of the eThekweni Municipality;
- (b) in relation to food products must be read in conjunction with the *Regulations Regulating General Hygiene Requirements for Food Premises the Transport of Food, and related matters* published in terms of the Foodstuffs, Cosmetics and Disinfectants Act, under Government Notice R. 638, dated 22 June 2018 as amended; and
- (c) in relation to milk and milk products, must be read in conjunction with the *Regulations Relating to Hygiene Requirements for Milking Sheds, the Transport of Milk and Related Matters*, made in terms of section 15(1) of the Foodstuffs, Cosmetics and Disinfectants Act, under Government Notice R961 in Government Gazette 35905 of 23 November 2012, as amended.

CHAPTER 4 FOOD

Handling, conveyance and transportation of food

5.(1) A person may not handle food in a manner contrary to the provisions of this By-law and the Regulations mentioned in section 4 of this By-law or in such a manner that it causes or is likely to cause a health nuisance and a food safety risk.

(2) A person may not handle, convey, transmit, deliver, store or deposit any food unless such food is effectively protected against droplet contamination or contamination by food pest, insects, dust, dirt, bare hands or other impurities or any other possible cause.

(3) A person may not cause or permit–

- (a) any matter, substance or ingredient which is diseased, unsound, unwholesome or injurious to the health of a person, to be used in the manufacture or preparation of any article intended for human consumption as food or drink, whether solid or liquid;
- (b) any article of food or drink which is not clean, wholesome, sound and free from any foreign object, disease, infection or contamination to be kept stored, sold or exposed for sale or introduced into any area of jurisdiction of the Municipality for purposes of sale;
- (c) any bottle, jar, tin or other container or any paper, cardboard or other material which is not clean and free from any matter or substance which might contaminate or infect food or drink to be used for the packing or wrapping of any article of food or drink;
- (d) a food premises to be used as a living or sleeping apartment or to communicate directly or indirectly by door, passage, window or otherwise with any living room or sleeping apartment;
- (e) food to be manufactured, prepared, stored, handled, sold or exposed for sale in a dwelling or other premises not designed, constructed or approved for the manufacture, preparation, storage or exposure of food for sale, without the prior written permission of the Municipality;
- (f) food premises to be used for any purpose incompatible with the business carried on therein;
- (g) articles not required in the process of manufacture, preparation, storage, handling or sale of food to be kept or stored in any food premises;
- (h) any live bird or animal to be kept on food premises except where the business involves the sale of live poultry or animal;
- (i) any confectionery, cooked meat or other unwrapped ready-to-eat foodstuffs to be handled other than by use of some suitable apparatus or instrument;
- (j) any apparel to be hung or kept inside any portion of the premises used for manufacturing, preparing, storing, keeping, handling or exposing food, other than in suitable lockers;
- (k) in any food room, the use of tobacco in any form whatsoever, subject to the provisions of the Tobacco Products Control Act, 1993 (Act No. 83 of 1993); or
- (l) a toilet facility to be in direct contact with a food preparation area or kitchen facility.

(4) A certificate of acceptability issued in terms of Regulation 638 relating to the conveyance of perishable food in a vehicle, must specify the premises at which the perishable food conveyed and sold from such vehicle is to be prepared.

(5) No perishable food may be conveyed in or sold from a motor vehicle unless it is prepared at the premises so specified.

(6) Any person conveying any meat, poultry or fish must convey such meat, poultry, or fish in a purpose designed vehicle or carrier which –

- (a) is constructed of non-absorbent material;
- (b) is easily cleansed;
- (c) provides efficient protection from contamination by dust, flies or any other cause;
and
- (d) is insulated and provided with refrigeration facilities that are fitted with a thermometer that is able to give accurate temperature readings.

(7) No vehicle which is used for transport of food may be used for any purpose other than for which it is intended.

(8) Every vehicle used for the purpose of conveying meat carcasses which is intended for human consumption must be so designed that all carcasses or parts thereof hang from a beam with stainless steel hooks fitted at such a height that such carcasses or parts thereof do not touch the floor of the vehicle.

(9) A person may not transport or carry any meat, poultry or fish in such a manner that the food may be spoiled or contaminated in any way.

(10) Every person who carries or conveys any carcass of meat intended for sale for human consumption must, whilst so engaged, wear a clean, washable uniforms, together with a rubberised hood and apron.

(11) Any person conveying any food in the course of business, other than by mode of hand, must –

- (a) convey or cause such food to be conveyed in a vehicle designed for that purpose;
and
- (b) ensure that, where such conveyance vehicle is designed to be loaded and unloaded from an internal passage, any food contained therein is not exposed to contamination by any person entering therein.

(12) Any conveyance vehicle contemplated in subsection (11) must be constructed of non-absorbent material, be easily cleansed and furnish efficient protection from contamination by dust, flies or other cause.

(13) A person may not enter or be within any portion of any vehicle transporting or conveying food other than the driver's cab, except for the purpose of loading or off-loading or cleansing and repair, unless the vehicle is provided with an internal passage which is not used or intended or designed to be used for storing food conveyed in the vehicle.

(14) The driver may not permit any person to sit, stand or recline upon any food being conveyed therein nor upon any portion of the vehicle other than the driver's cab internal passage.

(15) Every person who manufactures or prepares or conveys food for sale for human consumption must ensure that every vehicle, carrier or thing used in connection with the conveyance of any food –

- (a) is kept thoroughly clean and in good order, repair and appearance; and
- (b) may not be used for any purpose which may favour contamination of such food.

(16) All vehicles transporting food must be sanitised and the sanitisation thereof must be carried out at an approved premises.

(17) A person may not sell any perishable food through the medium of a machine or food vending machine –

- (a) unless such machine is of a type approved by the Municipality and authorised in writing by the Municipality to install and use such machine; and
- (b) other than in accordance with the provisions of this section and any condition or restriction imposed by the authorised official in approving a food vending machine or its installation and use.

Inspection and examination of food and food premises

6.(1) An authorised official may at all reasonable times inspect and examine any food and any premises, plant, machinery, utensils, vessels, receptacles, vehicles and the like form, in or by which food is produced, manufactured, prepared, stored, kept or conveyed.

(2) An authorised official may require any person to provide him or her with a sample of food or any documentation or information required by such official for any purpose authorised by this By-law or the Regulations referred to in section 4.

(3) Notwithstanding subsection (1), an authorised official may require, by written notice, any person to bring or deliver any specified article, container or package of food for inspection or examination to a place designated by such official.

(4) An authorised official may cut into or open, to the extent necessary, any article, container or package of food in connection with an inspection or examination contemplated in this By-law.

(5) A person may not, in respect of an authorised official acting in terms of this By-law –

- (a) refuse or without lawful reason fail to give access to any such official if he or she requests entrance to or upon any premises;
- (b) refuse or without lawful reason fail to give any information or any food sample, lawfully required by such official; or
- (c) obstruct or hinder such official in the execution of any of his or her duties or the exercise of any of his or her powers under this By-law or the Regulations referred to in section 4.

Restriction or prohibition of sale or supply of food

7.(1) The Municipality may issue a notice to any person requiring him or her to, within the time specified in the notice, discontinue any business dealing with the manufacture, preparation, storage, handling, sale or distribution of food –

- (a) on the specified premises or area; or
- (b) within the entire area of jurisdiction of the Municipality,

if that person has failed to comply with any provision of this By-law, any notice in terms of this By-law or the Regulations referred to in section 4.

(2) The Municipality may by written notice prohibit, for such period as it may deem necessary, the sale or supply of any food –

- (a) from any premises, place, facility, motor vehicle, vending equipment or any source whereon a food safety risk or health nuisance has occurred, or which, in its opinion, is likely to occur;
 - (b) from any premises, place, motor vehicle, vending equipment, or any source which is not registered or approved in terms of this By-law or any other law, if such sale or supply of food causes or is likely to cause a municipal health nuisance;
 - (c) from any premises whereon a case of communicable disease has occurred;
- or

- (d) if this, for any other reason or cause, in its opinion, is likely to cause sickness or disease if consumed.

Seizure, detention and destruction of food

8.(1) An authorised official may seize and detain any food, together with any food wrapping or packaging thereof –

- (a) in order to examine such food so as to determine its suitability for human consumption;
- (b) which, in his or her opinion, is: diseased, unsound or unwholesome, contaminated or otherwise unfit for human consumption; or
- (c) from any premises dealing with the manufacture, preparation, storage, handling, sale or distribution of food without being authorised by or in contravention of this By-law or the Regulations referred to in section 4.

(2) The Municipality may authorise the destruction of any food or food samples seized or detained in terms of this By-law.

(3) The Municipality may at the owner's risk, permit such treatment as may render the food or food wrapping or packaging referred to in paragraph (1)(a) fit for human consumption or use.

(4) The removal of all unsound foodstuffs, which includes voluntary surrender, may be subject to a tariff prescribed by the Municipality.

(5) All unsound foodstuffs must be disposed of at an approved waste disposal site under the supervision of an authorised official, subject to a prescribed tariff.

(6) The Municipality is not liable for any harm or loss suffered by any person as a result of it acting in terms of this section.

Standards and requirements for food premises

9.(1) The standards and requirements for food premises as contemplated in this By-law and the Regulations referred to in section 4 apply to all premises dealing with the manufacture, preparation, storage, handling, sale or distribution of food.

(2) A person may not handle food elsewhere other than on food premises that meets the requirements of this By-law and the Regulations referred to in subsection (1) and in a manner that complies with this By-law and the said Regulations.

(3) The owner of the food business has a duty to ensure that all buildings, hardened areas, drains, drainage connections and other appurtenances are maintained in good order and condition to the satisfaction of the Municipality.

(4) The food premises must be so constructed as to be fully vermin proof in accordance with the best available method.

(5) The surface of walls must be made of materials which are durable and suitable for the nature of the activities conducted in the food premises and must meet the following requirements –

(a) internal wall surfaces must –

- (i) be smooth, durable, resistant to corrosion, non-toxic and impervious to water;
- (ii) be free from cracks, crevices and other defects;
- (iii) be finished in a light coloured washable paint or ceramic tile;
- (iv) not have any skirting, picture rail, architrave, cover strip or other moulding fitted to it in the kitchen or preparation area; and
- (v) in food preparation areas where tiles are used, be tiled to a height of 2 (two) metres measured from the floor;

(b) where possible, edges must not be formed on a surface as a result of internal wall construction, or if unavoidable must be levelled at an angle of not less than 45° to the horizontal surface, or otherwise finished to prevent lodgement of dust, dirt or grease;

(c) where preformed materials comprise or form part of the internal surfaces of walls, there must not be any voids or crevices; and

(d) door openings, windows, serving hatches and similar fittings including protective fixtures on or in walls must be finished with all edges rounded to a smooth finish and all joints sealed.

(6) The surfaces of floors must be made of materials which are durable and suitable for the nature of activities conducted in the food premises and for incidental purposes.

(7) Floors must be –

- (a) smooth to facilitate cleaning, rigid, durable, slip resistant, resistant to corrosion, non-toxic and impervious to water;

- (b) free of cracks, crevices and other defects; and
 - (c) evenly graded to trap floor waste outlets connected to a drainage system where necessary.
- (8) The junctions between floors and walls or other vertical surfaces must be suitably covered and firmly supported.
- (9) Suitable and adequate washing, rinsing and sterilising facilities must be installed which must –
- (a) comprise of sinks, together with the necessary draining board or boards; and
 - (b) be made of stainless steel or other approved hard, non-absorbent material.
- (10) The bowl of each sink as contemplated in subsection (9) must be of a minimum capacity of 0, 07 cubic metres and, when so required by an authorised official there must also be provision for a deep trough or troughs of a minimum capacity of 0, 15 cubic metres.
- (11) Provision must be made for as many wash-hand basins as may be required and placed in positions readily accessible to employees whilst they are actively engaged in any activities involving the handling of or contact with any food.
- (12) An adequate supply of approved towels, and soap must be provided in conjunction with wash-hand basins.
- (13) Furnishings, fixtures and fittings must be of good, sound materials and construction, without crevices or interspaces likely to collect dust or dirt or to favour harbourage or development of rodents, cockroaches or other vermin.
- (14) The owner of the food premises must paint or otherwise suitably renovate any interior or exterior part of the premises when so required.
- (15) Every person who carries on a food business must, upon the premises provide sanitary facilities for the use by employees and patrons.
- (16) Every premises must be suitably ventilated by means of natural ventilation through openings or openable sections which are directly connected to the outside air and so positioned in the external walls or roof that effective cross - ventilation is possible.

(17) Every premises must be suitably illuminated by means of unobstructed transparent surfaces in the external walls or roof which admit daylight, with an area equal to at least 10% of the floor area in the room concerned, which artificial illumination complies with the requirements of the National Building Regulations and the Building Standards Act 1977, which permits an illumination strength equal to at least 200 lux: Provided that the intensity of the lighting must be adequate based on the nature of the operation and lighting fixtures are appropriately protected to prevent glass contamination of food.

Facilities on food premises

10.(1) The standards and requirements for facilities for food premises as contemplated in the Regulations referred to in section 4 apply to all premises dealing with the manufacture, preparation, storage, handling, sale or distribution of food.

(2) A person may not operate a food business on or using facilities for food premises that do not meet the standards and requirements contemplated in this By-law and the Regulations referred to in section 4.

(3) Every person who carries on any business involving the manufacture, preparation, storage, handling, sale or distribution of food must ensure that –

- (a) the premises used for the purpose of such business, including the furnishings, fittings, fixtures, the yard area and outbuildings are at all times maintained thoroughly clean and tidy and free from rodents, cockroaches and other vermin;
- (b) utensils, crockery or other articles used in connection with the manufacture, preparation, handling, cooking, eating and drinking of any food or beverage are, after each occasion of use, thoroughly cleansed by means of hot water and detergent;
- (c) the plant, equipment, cooking, eating and other utensils, including crockery, are maintained at all times in a sound and hygienic condition, and free of dirt, grime, dust or any extraneous or unclean substance; and
- (d) no flesh or carcass of any animal or the carcass of any bird which has died as the result of an accident or disease are prepared for sale, stored, kept, exposed for sale or sold for human consumption.

(4) The Municipality may prohibit the use of any –

- (a) type or class of bottle, jar, tin, carton, plastic tube or other container for the packing of any article of food or drink;
- (b) cork, stopper or cover in connection with items contemplated in paragraph (a); and
- (c) process or method of packing food,

which, in its opinion, is such that food contained therein or thereby is not protected from contamination by any cause or may be adversely affected thereby.

(5) The Municipality may prohibit the use of any vessel, utensil, machine, equipment or apparatus used for the manufacture, preparation, storage, handling, sale or distribution of food which, in its opinion, is –

- (a) unsuitable, worn out, rusted, defective, not functioning properly;
- (b) in such condition that it cannot be rendered clean and sterile; or
- (c) in such condition that food contained therein is not protected from contamination by dust, vermin or other cause.

(6) A person may not use any–

- (a) container, cover, process or method or type or class thereof which is prohibited in terms of subsection (4); or
- (b) vessel, utensil, machine, equipment or apparatus prohibited in terms of subsection (5),

without the written permission from the Municipality.

Water supply to food premises

11. All sinks, wash-hand basins and food preparation areas must at all times be provided at with a pure, constant and adequate supply of hot and cold water.

Kitchen, scullery and storage

12. Provision must be made for suitable and adequate –

- (a) preparation area, scullery and storage facilities; and
- (b) facilities for the keeping or containing of food stored or exposed for sale, or delivered to the business,

in such a manner that the food is rendered inaccessible to vermin and pests including cockroaches, rodents, and is protected from dust, flies or contamination from any other causes.

Sewerage, drainage and waste management

13.(1) All wastewater discharging from sink installations, wash-hand basins and floor drains must discharge over an open disconnecting gully externally situated, before connecting into the main sewer line.

(2) Where required by the Municipality any waste disposal system shall connect to a suitably sized grease interceptor before it connects to the drain. The grease interceptor shall be so located that it is easily accessible for inspection and cleaning purposes and that intercepted fat, grease and oil can be removed hygienically.

(3) Where any drain or discharge pipe passes through a room which is used as a kitchen, pantry or for the preparation, handling, storage or sale of any food, the means of access to such drain or pipe, for cleaning purposes, must be situated outside such room.

(4) The provisions of subsection (2) do not apply in the case of a waste pipe serving any waste fixture contained in such room.

(5) Every food premises must be equipped with –

- (a) a suitable waste receptacle storage area of adequate size, paved, drained to a gully and connected to the municipal sewer and provided with a standpipe;
- (b) a storage area for the waste receptacles to be cleaned and stored in such a manner that it does not create a health nuisance;
- (c) waste receptacles constructed of durable non-absorbent material, designed to facilitate easy cleansing, equipped with a close-fitting cover and sufficient for the purpose of storing all waste pending removal or disposal as contemplated in the By-law of the Municipality dealing with the removal of waste; and
- (d) an effective means of draining and disposal of wastewater as contemplated by the By-law of the Municipality dealing with sewage disposal.

Storage of perishable foods

14.(1) Where perishable foodstuffs are manufactured, prepared, stored, displayed, handled, sold or distributed, suitable and adequate heating or refrigeration storage equipment must be provided.

(2) Every chilling and freezer facility used for the storage, display or transport of perishable food must be provided with a thermometer which at all times must reflect the degree of chilling of the refrigeration area of such facility.

(3) Every heating apparatus or facility used for the storage, display or transport of heated perishable food must be provided with a thermometer which at all times must reflect the degree of heating of the heating area concerned.

(4) Any chilling and freezer facility referred to in subsection (2), and any heating apparatus or facility referred to in subsection (3), must be in such a condition and positioned so that an accurate reading of temperature may be taken unhampered.

Removal of fumes

15. (1) Suitable and efficient means for the collection, filtration, treatment, conveyance and disposal of fumes, gases, steam and warm air resulting from cooking or other process of manufacture or preparation must be provided in any premises to the satisfaction of the Municipality.

(2) The extraction system must be cleaned and maintained in accordance with applicable prescribed standards.

Personnel protective clothing

16.(1) Every person who carries on any business which involves the manufacture, preparation, storing, handling, sale or distribution of food must—

- (a) provide clean uniforms of light-coloured, washable material and other suitable protective clothing, including head, beard and traditional band coverings, for the use by his or her employees;
- (b) ensure that all employees engaged in the handling of food wear uniforms at all times whilst so engaged;
- (c) maintain uniforms and coverings in a clean and sound condition; and
- (d) ensure that all visitors to food premises, where applicable, wear suitable protective clothing.

(2) Every person who handles food must –

- (a) be clean as to his or her person and must wear clean uniforms including a clean head covering whilst so engaged;
- (b) wash his or her hands with soap and rinse them with clean water before commencing to handle any food;
- (c) maintain scrupulous cleanliness of hands with fingernails properly trimmed or cut short, no false nails or nail polish allowed;
- (d) remove his or her uniforms and head covering if any, before entering any toilet;
- (e) thoroughly wash and scrub his or her hands with soap and water—
 - (i) immediately after each occasion of visiting a toilet;

- (ii) every time he or she has blown his or her nose or after his or her hands have been in contact with perspiration or with his or her hair, nose or mouth;
 - (iii) after handling money or a waste container or waste; and
 - (iv) after handling raw vegetable, fruit, eggs, meat or fish and before handling ready-to-consume food; and
- (f) not wear any jewellery, other items or adornment that may come into contact with the food.

Quality of food and standards of prepared foodstuff

17.(1) No person who carries on any business which involves the manufacture, preparation, storage, handling or distribution of food, may or cause any person to, convey, transmit, deliver, store or deposit for sale or distribute any food which does not conform with the standards prescribed by this By-law or the Regulations referred to in section 4.

(2) Any manufactured, processed, pre-cooked, prepared or ready-to-consume food must meet the standards prescribed in the *Regulations Governing Microbiological Standards for Foodstuffs and Related Matters*, published under Government Notice R692 in GG 17993 of 16 May 1997, in terms of the Foodstuffs Cosmetics and Disinfectants Act, as amended from time to time and such food must not–

- (a) have decomposed;
- (b) contain antibiotics; or
- (c) contain organisms of the genera *Salmonella* and *Shigella* or species of *Vibrio cholerae* and other pathogenic bacteria.

(2) Any person using edible fats and oils must–

- (a) ensure that all used edible oils and fats must be discarded responsibly and not sold, donated or given to any persons for human consumption; and
- (b) provide upon the request of an authorised official the details of an approved contractor who will remove any used edible fats and oils from the food premises.

Temperature monitoring equipment

18. Every person who carries on a business which involves the manufacture, storage, handling, sale or distribution of perishable food whether frozen, cooked or otherwise, must –

- (a) provide and use a suitable thermometer or other suitable temperature monitoring equipment; and
- (b) maintain such thermometer or temperature monitoring equipment in good order,

in order to ensure that the food is preserved at all times in conformity with the temperatures prescribed in this By-law and relevant regulations.

Bacteriological standards of water and ice

19. In the case of water which enters into or issued in the composition or preparation of food or in the form of frozen confections or other water products or water to be used for the washing of food containers, or in the case of ice –

- (a) no typical faecal coliform or E. Coli may be present;
- (b) total coliforms must be ≤ 10 per 100ml; and
- (c) when tested at 37 degrees Centigrade the total count of viable organisms may not exceed 100 colonies per millilitre.

Batch identification and date marking

20.(1) Any food packaging container of a foodstuff must be permanently marked in such a way that the manufacturing or factory where a final product is produced has a batch number that is visible and identifiable.

(2) An estimated date of durability must –

- (a) be indicated by the manufacturer on the label or container;
- (b) not be removed or altered; and
- (c) contain a best-before or a use-by-date.

(3) Imported foodstuffs must upon entry into the Municipality have at least 50% of the remaining shelf life left, calculated from the date of manufacture.

Unprocessed products

21.(1) The Municipality, may, if it is of the opinion that conditions prevail that constitute a health nuisance with regard to the packing, storage, display, sale or transport of –

- (a) fresh, raw and unprocessed fruit and vegetables;
- (b) unprocessed maize, wheat, rye, unshelled peanuts, sugar cane, sunflower seed;
- (c) other unprocessed agricultural crops; or
- (d) the handling of any food,

subject to the Regulations referred to in section 4, order that any condition that led to or may lead to the said health nuisance be corrected or that any provision of this By-law be complied with; or prohibit the continued use of the facility or food premises concerned.

(2) A person may not handle bottled or packaged drinking water (other than natural mineral water) in contravention of the provisions of the *Codex Code of Hygienic Practice for Bottled/Packaged Drinking Waters (Other than Natural Mineral Waters)*(CAC/RCP 48- 2001).

CHAPTER 5 MILK AND MILK PRODUCTS

Authorisation for milk producer, milk processor and supplier

22.(1) A person may not carry on business as a milk producer or milk processor without the written authorisation of the Municipality, which authorisation may be –

- (a) granted subject to such conditions or restrictions as may be determined by the Municipality; or
- (b) refused.

(2) No milk dealer may use any automatic vending or other machine for the purpose of selling or dispensing any milk or milk products without the written authorisation of the Municipality, which authorisation may be –

- (a) granted subject to such conditions or restrictions as such official may determine; or
- (b) refused.

(3) No milk producer or milk processor may sell or supply any grade of milk other than that specified in his or her authorisation without the written authorisation of the Municipality.

(4) Application for the authorisation required in terms of subsections (1), (2) or (3) must be made to the Municipality on a prescribed form and upon payment of a prescribed fee.

(5) Every application made in terms of subsections (1) and (2) must be accompanied by—

- (a) a locality plan drawn to a scale of not less than 1:1000 showing all roads and dwellings within a radius of 90 m from the premises upon which the business is to be carried on;
- (b) plans and sections to a scale of at least 1:100 of the buildings erected and to be used or proposed to be erected and used for the purposes of the business for which the certificate of registration has been sought; and
- (c) information relating to –

- (i) the plant installed and to be used for the purposes of the business for which the authorisation is sought, including the number, capacity and type or description of all boilers, sterilisers, coolers and other apparatus;
- (ii) any necessary explanatory drawings of the means proposed to be adopted for the disposal of, and to prevent health nuisance arising from, fluids and liquid waste matters discharged from the premises, and solid waste matters;
- (iii) the materials used or to be used in the construction of and the dimensions of the staff quarters (including sleeping, living, mess and change rooms, kitchens, bath or wash rooms and latrines and the like) proposed to be used;
- (iv) the nature of the proposed water supply and the situation of the proposed points of distribution;
- (v) the type of sanitation proposed and the number of seats to be provided;
- (vi) the total area of the land to be used in connection with the business for which an authorisation is sought, the portion or portions to be used as paddocks and the number of bovine animals proposed to be kept;
- (vii) the milk and milk products which he or she intends to sell or supply during the period covered by such authorisation;
- (viii) the milk dealers information from milk processors; and
- (ix) the laboratory results from the milk producers and milk processor for a period of three months.

(6) The Municipality may refuse an application for authorisation in terms of subsections (1) if, in its opinion the—

- (a) locality of the premises sought to be registered is unsuitable, having regard to environment or to accessibility or distance of the premises from a milk depot;
- (b) buildings, plant, water supply or other condition or circumstance is contrary to any provisions of this By-law; or
- (c) granting of authorisation would be prejudicial to the public health.

(7) The Municipality may refuse an application for authorisation in terms of subsections (2) if, in its opinion the granting of such authorisation would be harmful to the public health.

(8) Any person authorised in terms of this section must –

- (a) carry on his or her business in accordance with this By-law and any conditions or restrictions imposed by the Municipality; and
- (b) only use the buildings, plant, equipment, containers, vehicles and water supply specified in the authorisation or in the certificate of registration relating to the buildings or plant issued to him or her in terms of this chapter.

(9) An authorisation contemplated in subsections (1) and (2) will not be valid in respect of any premises other than those specified in the authorisation.

(10) An authorisation contemplated in subsections (1) and (2) is valid until 31 December of the year of issue and must be renewed once annually.

(11) An application for renewal together with the prescribed fee must be lodged with the Municipality at least 1 month prior to the date of expiry of the authorisation.

(12) No authorisation may be transferred from the holder thereof to any other person except by endorsement by the authorised official.

(13) In the event of a holder disposing of his or her business to another person, such other person must make written application with the Municipality for transfer of authorisation to his or her name.

(14) The Municipality may cause an inspection to be carried out on premises, or request any information before endorsing a transfer of authorisation, or require both such inspection and information.

(15) If the Municipality is of the opinion that there are reasonable grounds to suspect that the holder conducts his or her business in –

(a) such a way as to create a health nuisance or that conditions constituting a health nuisance have been or are being created; or

(b) contravention of the provisions of this By-law or any condition of the authorisation, it may issue written notice to the holder of such authorisation of its intention to revoke or suspend an authorisation for a specified period, if such holder fails to comply with the notice within the period stipulated in the notice.

(16) If the holder fails to take the necessary measures to comply with the notice as contemplated in subsection (15) within the period stipulated in such notice, the Municipality may revoke or suspend, as the case may be, the authorisation concerned without further notice to the holder.

(17) The holder may in writing make an application to the Municipality for the repeal of revocation or suspension of an authorisation, setting out the extent to which the conditions which led to such revocation or suspension have been rectified.

(18) If the Municipality is of opinion that any condition that gave rise to the revocation or suspension of an authorisation has been rectified, it may, upon application contemplated in subsection (17), repeal such revocation or suspension by endorsement on the certificate concerned.

Authorisation for building and plant

23.(1) Where an alteration or addition is being made to any premises, the person to whom an authorisation has been granted to effect such alteration or addition, in respect of such premises must—

- (a) inform the Municipality of such alterations or additions;
- (b) furnish the Municipality with a plan in duplicate, showing the existing buildings, together with the alterations and additions; and
- (c) after the plan has been approved, attach such plan to the original application and certificate.

Alteration of building or plant and conditions of certificate

24.(1) In the event of any person to whom an authorisation contemplated in section 22 has been issued intends altering —

- (a) any of the conditions subject to which a certificate has been issued; or
- (b) the plant or the building,

he or she must make written application to the Municipality for such alteration.

(2) An application contemplated in subsection (1) must contain a detailed description of the desired alteration, the reasons thereof and must be accompanied by —

- (a) the original written authorisation; and
- (b) in the case of an alteration of a plant or building, detailed plans thereof.

(3) The Municipality may endorse the desired alteration in the original authorisation if it is satisfied that the alterations meet the requirements of this By-law and will not cause a health nuisance.

Restrictions relating to milk dealers

25.(1) No milk dealer may sell any milk or milk products —

- (a) other than milk or milk products conforming to the specifications prescribed by this

By-law, obtained from an authorised milk processor, in bottles or other containers filled, packed or wrapped in accordance with the requirements of this By-law; or
(b) for consumption off the premises otherwise than in the sealed and unopened bottles or containers in which such milk or milk products were obtained from the authorised milk dealer; provided that nothing herein contained may preclude the sale on such premises of ice-cream in cones, cups or similar containers for immediate consumption.

(2) All milk and milk products kept by a milk dealer on premises for sale must be stored in a cold room at a temperature below 4°C.

(3) Every milk dealer must, in handling ice-cream on the premises, use approved apparatus, instruments or dispensing machinery.

(4) Where ice-cream in the possession of a milk dealer thaws, it may not thereafter be re-frozen or sold.

(5) Nothing in this By-law may be construed as preventing the preparation of partially frozen ice-cream mix upon the premises of a milk dealer.

Furnishing of documents on demand

26.(1) Every milk producer, milk processor or milk dealer must, on demand by an authorised official, produce for inspection, all invoices, accounts, books, records and other documents relating to the production, manufacture, preparation or supply of milk or milk products by him or her.

(2) Every milk producer, milk processor or milk dealer must furnish an authorised official contemplated in subsection (1), with a list of names and addresses of –

- (a) customers or persons to whom he or she supplied milk or milk products; and
- (b) persons from whom he or she obtained milk or milk products; during such period as the authorised official may specify, together with such invoices, accounts, books, records and other documents as are necessary to substantiate such lists.

(3) An authorised official of the Municipality who during the course of his or her duties under this By-law, acquires any information in relation to the financial affairs, trade records or business administration of any person or firm with whom this By-law is concerned may not

disclose such information other than in accordance with the law or as required by his or her normal course of duty.

(4) Any such authorised official who discloses any such information as aforesaid other than in accordance with the law or as required by his or her normal course of duty is guilty of misconduct and may be disciplined by the Municipality in accordance with applicable laws and procedures relating to misconduct of employees.

Introduction of milk and milk products into the Municipality

27.(1) No person other than a registered milk processor or registered milk producer may introduce any milk or milk products into the Municipality's jurisdiction for sale or distribution for human consumption or for pasteurisation.

(2) All milk and milk products introduced into the Municipality's jurisdiction must, until the contrary is proved, be deemed to have been introduced for one or other of the purposes aforesaid in subsection (1).

List of suppliers

28. Every milk producer, milk processor or milk dealer must keep a list of the names and addresses of customers or other persons to whom milk or milk products are sent or from whom milk or milk products are received from time to time.

Samples of milk or milk products

29.(1) An authorised official may require any person to provide him or her with any sample of milk or milk product required by such official for any purpose authorised by this By-law.

(2) A person may not refuse or without lawful reason fail to provide any sample contemplated in subsection (1) to such authorised official.

Inspection and examination of depots

30.(1) The Municipality may require, by notice, any person to bring or deliver any specified article, container or package of milk or milk product, for inspection or examination to any depot established for that purpose.

(2) An authorised official has the power to cut into or open any article, container or package of milk or milk product in connection with such inspection or examination.

Detention, seizure and destruction of milk or milk products

31. Any authorised official may restrict or prohibit the sale of and may detain or seize any milk or milk product which is diseased, unsound, unwholesome, or otherwise unfit for human consumption and authorise its destruction under this By-law.

Owner's risk

32. The Municipality may, at the owner's risk, permit treatment that may render the milk or milk product referred to in section 31 fit for human consumption.

Prohibiting sale or supply of milk or milk products

33. The Municipality may prohibit, for such period as it deems necessary, the sale or supply of any milk or milk products –

- (a) from any premises whereon a case of communicable disease has occurred;
- (b) from any source wherefrom milk or milk products previously supplied is suspected to have been the cause of any case of communicable disease;
- (c) wherein the presence of tubercle bacilli has been detected by a veterinary officer or a competent bacteriologist;
- (d) if it is of the opinion that consumption thereof is likely to cause sickness or disease;
- (e) if it does not meet the standards set in terms of this By-law; or
- (f) at or from any premises where the requirements of this By-law are not met.

General requirements for premises

34.(1) Subject to the provisions of the National Building Regulations and Standards Act, a person may not carry on any business which involves the manufacture, production, preparation, storing, handling, sale or distribution of milk or milk products in or upon any premises which do not comply with the following provisions:

- (a) walls must be constructed of brick, concrete, or other approved solid material and the internal surface of such walls must be well and smoothly rendered; provided that in respect of any portion or portions of the premises used for the manufacture or preparation, storage, handling, sale or distribution of milk or milk products, internal

- walls must in addition be suitably covered with tiles or other approved impervious material;
- (b) the floors of all portions of the premises must be constructed of concrete or other similar solid and impervious rat-proof material and must be adequately drained;
 - (c) the roof must be constructed of iron, asbestos, slate, tiles or other approved impervious material;
 - (d) all ceilings must be of approved solid material covered with lime or cement plaster or other suitable impervious material finished to a smooth surface and rendered dust-proof;
 - (e) adequate natural or artificial means of lighting and ventilation in conformity with the standards laid down in terms of National Building Regulations and Standards Act, the Occupational Health and Safety Act 85 of 1993 and the applicable Regulations in terms of this legislation must be provided;
 - (f) the buildings must be so constructed as to obviate, as far as practicable, any harbourage for rats or other vermin and the milk room, wash room, feed stores and structures used in connection with the manufacture, preparation, storage, handling, sale or distribution of any milk products must be rendered fully rodent-proof;
 - (g) a pure, ample and convenient water supply must be laid on to all points requisite for the proper functioning of hygiene and sanitary amenities;
 - (h) where the water supply is not obtained from the Municipality's water mains the purity standard approved by the Municipality;
 - (i) there must be no opening or inlet into any drain from any portion of the premises used for the production, manufacture, preparation, storage, handling, sale or distribution of milk or milk products and no water closet, privy, urinal or stable may directly communicate with such portions of the premises;
 - (j) no soil or wastepipe may be conducted through any portion of a building used for the production, preparation, storage, handling, sale or distribution of milk or milk products;
 - (k) an adequate yard space must be provided, of which the surface must be properly hardened and drained and such yard must be kept free from lumber or litter capable of breeding mosquitoes or attracting vermin;
 - (l) a person may not erect, alter, adapt or convert any building to be used for the production, manufacture, preparation, storage, handling, sale or distribution of milk or milk products after the promulgation of this By-law, unless adequate yard space for the storage of waste receptacles, together with access thereto other than through the shop or manufactory, is provided; and
 - (m) effective means of draining and disposal of waste liquids and stormwater must be provided.

(2) The owner or person in control of any business which involves the manufacture, production, preparation, storing, handling, sale or distribution of milk or milk products must maintain all buildings, hardened areas, drains, drainage connections and other appurtenances in good repair and condition.

(3) The owner or person in control of any business which involves the manufacture, production, preparation, storing, handling, sale or distribution of milk or milk products must paint with a light-coloured washable paint or otherwise suitably renovate any exterior part of the premises owned by him when so required by the Municipality.

Structural requirements for premises of milk producers

35.(1) Every milk producer must in or upon the premises used by him or her for the purpose of his or her business, provide –

- (a) a milking shed or sheds which must have –
 - (i) walls of a height measured internally not less than 2,5 metres from the floor to the underside of the wall plate, which walls must have a smooth and impervious finish of light-coloured material or paint;
 - (ii) a milking passage not less than 1,5 metres in width, provided that in the case of a double-byre shed a central passage must be provided with a minimum width of 2,4 metres;
 - (iii) a solid and impervious floor, adequately drained to an outside gully which must be connected to an approved drainage system effective for the disposal of waste or soil water;
 - (iv) stanchions and other fittings suitably constructed of metal or other impervious material;
 - (v) a manure disposal system such that the immediate vicinity and the dairy premises as far as practicable are free of flies; and
 - (vi) an area paved with concrete or other approved solid material at the entrance to, and exist from, the shed extending for a minimum distance of 10 metres from the entrance and 5 (five) metres from the exit and of a width of not less than either that of the shed or a cattle race if provided;
- (b) a milk room which must –
 - (i) be dust and fly-proof;
 - (ii) be provided with a ceiling which must be painted with a light-coloured washable paint;

- (iii) have walls at least 2,4 metres in height measured from the floor to the ceiling and the inside wall surfaces must have a smooth and impervious finish of light-coloured material or paint;
 - (iv) be equipped with doors which must be capable of being locked;
 - (v) have a solid and impervious floor adequately drained to an outside gully which must be connected to an approved drainage system effective for the disposal of waste or soil water;
 - (vi) be of a minimum floor area of 13,5 squarer metres, exclusive of a cold room or immersion tank;
 - (vii) be adjacent to the milking shed and may communicate directly therewith provided the interleading opening is fly-screened with a self-closing door;
 - (viii) not communicate directly with any dwelling or feed store;
 - (ix) be used solely for the purposes for which authorisation was issued in respect of milk producers and milk dealers; and
 - (x) not have any motor, engine or boiler, other than a unit with a built-in electric motor, installed or used therein;
- (c) a wash room which must –
- (i) comply with the provisions of paragraph (b);
 - (ii) be of a minimum floor area of 11 (eleven) square metres; and
 - (iii) communicate directly with the milk room, provided that where one or more bulk milk tanks are installed the minimum area to be provided for the washing of utensils must be 9 square metres;
- (d) a feed store which must be so constructed and maintained as to exclude rodents and which must have no direct opening to the milk room or wash room, and no feed must be milled in a feed store unless such store is completely disconnected from the milk shed, milk room or wash-room; and
- (e) fenced paddocks for the exercising of bovine animals, provided that such paddocks must not be situate within 15 metres of the milk shed, milk room or wash-room.

Standards and requirements for milksheds

36. Every milkshed must meet the standards prescribed by the *Regulations Relating to Hygiene Requirements for Milking Sheds, the Transport of Milk and Related Matters* made in terms of section 15(1) of the Foodstuffs, Cosmetics and Disinfectants Act, under Government Notice R961 in Government Gazette 35905 of 23 November 2012, as amended from time to time.

Milk apparatus

37. Every milk producer, milk processor or milk dealer must for the purpose of his or her business provide approved apparatus for the handling, straining, mixing, preparation, cooling, storing and conveying of milk or milk products and for the cleansing or sanitising of plant, equipment and utensils.

Equipment, furniture, fittings and fixtures

38.(1) A person may not carry on any business which involves the production, manufacture, preparation, storing, handling, sale or distribution of milk or milk products in or upon any premises which do not comply with the following provisions, namely –

- (a) supply of sufficient sinks or troughs, of approved design, materials and construction in the wash room and at such other places as may be prescribed by the Municipality;
- (b) constant and adequate supply of steam and hot water laid on to all sink installations, troughs and such other points as the Municipality may prescribe;
- (c) furnishing, fixtures and fittings of good sound materials and construction, without crevices or interspaces likely to collect dust or dirt or to favour harbourage or development of rodents, cockroaches or other vermin; and
- (d) refrigeration facilities such that milk or milk products can be kept at a temperature of 4°C or less at all times.

(2) Every person who carries on any business involving the production, manufacture, preparation, storage, handling, sale or distribution of milk or milk products must maintain all equipment, plant, machinery, furniture, fittings and fixtures used in connection with such business in good order and condition.

Protection, storage and distribution of milk and milk products

39. Every person who carries on any business involving the production, manufacture, preparation, storage, handling, sale or distribution of milk or milk products must ensure that –

- (a) the premises used for the purposes of such business including the furnishing, fittings and fixtures, the yard area and outbuildings must, at all times be maintained, thoroughly clean and tidy and, as far as practicable, free from rodents, cockroaches and other vermin;
- (b) no vessel, utensil or apparatus used in connection with the business is worn out, rusted or in such condition that it cannot be rendered clean and sterile;

- (c) all milk vessels, utensils and apparatus are kept in good repair, are thoroughly cleansed and thereafter sanitised after each occasion of use and are stored or kept thereafter in such a manner as to remain clean;
- (d) no article of wearing apparel may be hung or kept inside any portion of the premises used for the production, manufacture, preparation, storage, handling, sale or distribution of milk or milk products; and
- (e) proper and sufficient facilities for the keeping or containing of milk or milk products stored or exposed for sale such that the milk or milk products are thereby rendered inaccessible to cockroaches and rodents, and protected from dust and flies.

Unsuitable equipment and compatible use

40.(1) The Municipality may prohibit the use of any vessel, utensil or apparatus used in connection with any business involving milk or milk products which, in its opinion, is –

- (a) unsuitable, worn out, rusted or otherwise defective; or
- (b) in such condition that it cannot be rendered clean and sterile.

(2) A person may not use a vessel, utensil or apparatus prohibited in terms of subsection (1) without the written permission of the Municipality, or upon sufficient proof that such equipment has been suitably reconditioned such that it may not cause the contamination of milk or milk products or danger to public health.

(3) No room for the production, manufacture, preparation, storage, handling, sale or distribution of milk or milk products may be used or allowed to be used as a living or sleeping apartment or communicate directly or indirectly by door, passage, window or otherwise with any living room or sleeping apartment or water closet.

(4) No milk or milk products may be manufactured, prepared, stored, handled, sold or exposed for sale in a living or sleeping apartment, sanitation annexe, stable or other premises not designed, constructed or intended for the production, manufacture, preparation, storage, handling or exposure of milk or milk products.

(5) No room for the production, manufacture, preparation, storage, handling, sale or distribution of milk or milk products may be used for any purpose incompatible with the business carried on in such room.

(6) Articles not required in the process of production, manufacture, preparation, storage, handling, sale or distribution of milk or milk products may not be kept in any room aforesaid.

Prohibition of live animals

41. No milk processor or milk dealer may keep or permit any live animal in or upon the premises.

Use of tobacco

42. A person may not, whilst actively engaged in the production, manufacture, preparation, storage, handling, sale or distribution of milk or milk products use tobacco in any form whatsoever.

Contamination of milk

43. No milk producer, milk processor or milk dealer may, or cause any person to, handle, convey, transmit, deliver, store or deposit any milk or milk products, unless such milk or milk product is effectively protected against contamination where there is a reasonable possibility of it becoming contaminated by flies, dirt, dust or any other cause.

Delivery of milk or milk products

44.(1) No milk producer or milk processor may sell milk or milk products except in an approved type container which is properly sealed.

(2) A person may not remove milk or milk products from a container referred to in subsection (1) or break the seal thereof, before delivery to the purchaser.

(3) Each container must be so labelled or marked as to show clearly –

- (a) the nature of the milk or milk product contained therein; and
- (b) in the case of milk or cream, the name of the milk producer or milk processor and the address of the premises where such product was produced, pasteurised, or otherwise processed, as the case may be, or such other means of identification as may be approved by the Municipality.

Storing of milk

45. No milk producer or milk processor may permit any milk or milk products or any clean bottles, cans and other containers or utensils used in connection therewith to be stored or kept elsewhere than in a milk room, cold room or wash room.

Transfer of milk or milk products

46. Except as provided in this By-law, no milk producer or milk processor may transfer or allow to be transferred, milk or milk products from one container to another, other than in a milk room.

Milkshed, milk room and wash-room not to be used for other purposes

47. Every milk producer must ensure that every milkshed, milk room and wash-room used by him or her for the purposes of his or her business is used only for the purposes for which it is intended.

Milking procedure

48. Every milk producer must ensure that –

- (a) no milking is undertaken elsewhere than in a milking shed which complies with the provisions of this By-law;
- (b) the animals to be milked are clean;
- (c) the udder and teats are washed with running water before being milked, and adequate steps are taken to prevent contamination of milk by urine, faecal matter or other extraneous substance;
- (d) every milker washes his or her hands and finger nails thoroughly with an approved soap and clean water before commencing milking and immediately after every interruption thereof;
- (e) every person who milks by hand uses only an approved lubricant kept in a container provided with a closely-fitting lid which is replaced immediately after each occasion of use and such container is internally and externally free of any extraneous substance;
- (f) the foremilk from each animal at every milking is examined for evidence of mastitis by passing it into a strip cup or other approved testing appliance;
- (g) the first stream of milk from each teat, and foremilk showing evidence of any abnormality and the milk from any cow known or suspected to be unhealthy or diseased is discarded in such manner as to avoid contaminating any other milk;

- (h) all milk, immediately after milking, is passed through a clean strainer of an approved single-use type and is removed from the milking shed to the milking room;
- (i) milk on arrival in the milk room is immediately cooled and maintained until despatched at a temperature not exceeding 4°C;
- (j) milking stools and any other equipment are so constructed and of such material as to be capable of effective cleansing and be maintained clean at all times;
- (k) only hobbles of the chain type are used; and
- (l) no milking pail or milk-can is used for any other purpose whatsoever.

Cleansing of milk shed

49.(1) Every milk producer must –

- (a) cause the floor of the milking shed to be thoroughly washed within one hour of the completion of each occasion of milking and as often as may be necessary; and
- (b) cause the ceiling, walls and ledges of every milk shed used by him or her to be kept free from dust, dirt or cobwebs.

(2) No milk producer may permit any grooming or sweeping in the milk shed while milking is in progress.

Storage of forage in milk shed

50. No milk producer may permit the stacking or storing of cattle feed in any milk shed, milk room or wash room.

Keeping of animals in milk shed

51. No milk producer may permit the use of any milk shed for the keeping of animals other than animals used for milking.

Swine and poultry

52. No milk producer may keep –

- (a) any swine or poultry within 140 metres of the milk shed, milk room or wash room: Provided that this does not preclude the keeping of swine or poultry within 45 metres of such shed or rooms in an approved sty or sties of solid construction, with concrete floors and suitable drainage; and provided, further, that such sty or sties are maintained in a clean condition and free of any nuisance; or

- (b) any poultry unless so kept as to prevent any access to or contamination of milk or milk utensils.

Erection and use of dipping tank or spray race

53. No milk producer may erect or use a dipping tank or spray race within 45 metres of the milkshed, milk room or wash room.

Prohibited supply of milk of animals

54. No milk producer may sell or supply for human consumption milk from a cow –

- (a) within 14 days preceding the birth of a calf or during the 6 days following such birth;
or
- (b) that has been treated with an antibiotic drug by the intramammary route within a period of 72 hours following such treatment.

Controlling milk and milk product introduction and distribution

55.(1) Unless authorised in writing by the Municipality –

- (a) no milk producer may sell any milk or milk product for human consumption unless he or she has obtained such milk or milk product from his or her own shed;
- (b) no milk producer may sell any milk or milk product for human consumption to any person other than a milk processor authorised under this By-law;
- (c) no milk processor may sell for human consumption any milk or milk product other than milk or milk products obtained from a milk producer or milk processor;
- (d) no person other than a milk processor may, within the Municipality, purchase or receive for human consumption any milk or milk product except from a milk dealer or registered milk dealer; and
- (e) no milk dealer or person other than a milk processor may hawk milk or milk products or deliver the same other than to a consumer against a specific order.

(2) All milk or milk products sold or supplied in terms of this By-law by a milk producer, milk processor or milk dealer must, unless the contrary is proven, be deemed to have been sold or supplied for human consumption.

Ice-cream restrictions

56.(1) All ice-cream sold by a milk processor must conform to the standards prescribed by this By-law and be packed in cartons or other approved containers fitted with tight-fitting covers or wrapped in clean paper or other approved material in a milk room.

(2) Every milk processor must store all wafers and ice-cream ingredients in such a manner as to preclude the contamination thereof.

(3) No milk processor may re-freeze or cause or permit to be re-frozen or sell any ice cream which has thawed.

Milk tankers

57.(1) No milk producer, milk processor or other person may, except with the authorisation of the Municipality, use any bulk tanker for the transportation of milk or milk products in terms of this By-law.

(2) An authorisation contemplated in subsection (1) may be refused or granted subject to such conditions or restrictions as the Municipality may determine.

Transportation of milk and milk products

58. The following apply with regards to the transportation of milk and milk products:

- (a) the *Regulations Regulating General Hygiene Requirements for Food Premises the Transport of Food, and related matters* published in terms of the Foodstuffs, Cosmetics and Disinfectants Act, under Government Notice R. 638, dated 22 June 2018 as amended, the *Regulations Relating to the Hygiene Requirements for Milking Sheds, the Transport of Milk and Milk Products and Related Matters*, in terms of the Foodstuffs, Cosmetics and Disinfectants Act, published under Government Notice R. 961, dated 23 November 2012, as amended; and
- (b) any other applicable law.

Hygiene requirements

59. The following apply with regards to hygiene requirements in respect of milk and milk products:

- (a) the *Regulations Regulating General Hygiene Requirements for Food Premises the Transport of Food, and related matters* published in terms of the Foodstuffs, Cosmetics

- and Disinfectants Act, under Government Notice R. 638, dated 22 June 2018 as amended;
- (b) the *Regulations Relating to the Hygiene Requirements for Milking Sheds, the Transport of Milk and Milk Products and Related Matters*, in terms of the Foodstuffs, Cosmetics and Disinfectants Act, published under Government Notice R. 961, dated 23 November 2012; and
- (c) any other applicable law.

Quality and standards for milk and milk products

60.(1) No milk processor may pasteurise, or otherwise process any milk or milk products unless such milk or milk products, upon arrival at the premises of such milk dealer, are in compliance with the standards prescribed by this By-law and the Regulations referred to in section 58.

(2) No milk producer or milk processor may sell milk or milk products unless such milk or milk products conform to the specifications prescribed in this By-law.

(3) Every milk producer, milk processor and milk dealer must provide and use the equipment necessary for accurately determining the temperature of all milk or milk products on the premises.

(4) Every milk processor must provide and use the equipment and other facilities necessary for determining the acidity of milk or milk products received by him or her for pasteurisation or other process.

(5) No milk producer, milk processor or milk dealer may add any preservative, water, dried or condensed milk or any other extraneous matter to any milk sold or produced by him or her or in his or her premises for purposes of sale or delivery to a purchaser or consumer nor may he or she reconstitute milk.

(6) No milk producer, milk processor or milk dealer may add any unclean, unwholesome or harmful substance to or adulterate any milk product sold or produced by him or her or in his or her premises for purposes of sale or delivery to a purchaser or consumer.

(7) No milk may, whilst in transit to or on arrival at a milk depot exceed 0,18 % acidity or a temperature of 7° Celsius.

(8) No sour cream, cultured or similarly prepared milk which has been pasteurised may on examination contain –

- (a) more than 50 coliform organisms per millilitre or, in the semi-solid state, per 1,0 gram;
- (b) Escherichia coli type I organisms in 1,0 millilitre or, in the semi-solid state, 1.0 gram;
- (c) any viable pathogenic organisms; or
- (d) any substance inhibitory to bacteria growth.

(9) Milk, milk products or other ingredients used in the manufacture of ice-cream must be heat-treated by being retained at a temperature of not less than 69°C for a period of not less than 30 minutes in an approved pasteurising plant, and thereafter immediately cooled to a temperature of not more than 5°C.

(10) Ice-cream may not contain –

- (a) more than 10 coliform organisms per millilitre or, in the semi-solid state, per 1,0 gram;
- (b) E.coli type I organisms in 1,0 millilitre or, in the semi-solid state, 1.0 gram;
- (c) any viable pathogenic organisms; or
- (d) any substance inhibitory to bacteria growth.

(11) Pasteurised milk and milk products, when tested by the phosphatase test, must give a negative result.

(12) Samples of milk taken under this By-law must be taken with sterilised equipment and transferred to sterilised sample containers, taking precautions to prevent the contamination of the sample and the sample container must be –

- (a) stoppered and within 5 minutes of the sample being taken; and
- (b) surrounded by crushed ice or other suitable refrigerant capable of reducing the temperature of the sample to and maintaining the sample at a temperature not exceeding 7° C nor less than 0° C.

(13) All milk and milk products may not on examination contain any viable pathogenic organisms.

CHAPTER 6 ENFORCEMENT

Routine inspections

61.(1) An authorised official may enter any premises in which this By-law applies, at any reasonable time and –

- (a) inspect such premises in order to ensure compliance with this By-law;
- (b) question any person who he or she believes may have information relevant to the inspection;
- (c) require the person in charge of such premises to produce, for inspection or for the purpose of obtaining copies or extracts thereof or therefrom, any document that such person is required to maintain in terms of this By-law or any law; and
- (d) take samples of any substance that is relevant to the inspection.

(2) An authorised official may issue a compliance notice to the person in charge of the premises if a provision of this By-law has not been complied with.

(4) A compliance notice remains in force until the relevant provision of this By-law has been complied with and the Municipality has issued a compliance certificate in respect of that notice.

(5) An authorised official who removes any item other than that contemplated in subsection (1) (d) must –

- (a) issue a receipt for it to the person in charge of the premises; and
- (b) subject to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), return it as soon as practicable after achieving the purpose for which it was removed.

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

CHAPTER 7 OFFENCES AND PENALTIES

Offences

62. (1) A person is guilty of an offence if he or she –

- (a) obstructs or hinders in any manner whatsoever an authorised official who is performing a function under this By-law;
- (b) 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;
- (c) knowingly gives false or misleading information to an authorised official;
- (d) unlawfully prevents the owner of any premises, or a person working for the owner, from entering the premises in order to comply with a requirement of this By-law;
- (e) impersonates an authorised official;
- (f) contravenes or fails to comply with any provision of this By-law; or
- (g) contravenes or fails to comply with any order or notice lawfully issued under this By-law.

(2) A person is guilty of a continuing offence if he or she continues with the offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence, or after he or she has been convicted of such offence.

Penalties

63.(1) Any person who is convicted of an offence under this By-law is liable to a fine of an amount not exceeding R200 000 or to imprisonment for a period not exceeding 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 8 MISCELLANEOUS PROVISIONS

Presumptions

64.(1) When an employee of a person in the course of his or her employment performs any act or is guilty of an omission which constitutes an offence under this By-law, the employer is deemed also to have performed the act or to be guilty of the omission and the employer is

liable on conviction to the penalties referred to in this By-law, unless the employer proves to the satisfaction of the Court that –

- (a) in performing the act or being guilty of the omission, the employee was acting without the employer's knowledge or permission;
- (b) all reasonable steps were taken by the employer to prevent the act or omission in question; or
- (c) it was not within the scope of the authority or the course of the employment of the employee to perform an act of the kind in question.

(2) The fact that an employer issued instructions forbidding any act or omission of the kind referred to in subsection (1) is not in itself sufficient proof that he or she took all steps referred to in paragraph (1)(b).

(3) When an employer is by virtue of the provisions of subsection (1) liable for any act or omission of his or her employee, that employee is also liable to prosecution for the offence.

(4) In any prosecution for an offence under this By-law an allegation in the charge concerned that any place was situated in a street or public place or within a particular area or was a place of a specified kind, must be presumed to be correct unless the contrary is proved.

(5) In any prosecution for an offence under this By-law the accused is deemed to know the provisions of this By-law and to know that the offence with which he or she is charged is a contravention thereof unless he or she proves to the satisfaction of the Court that he or she did not have and could not reasonably be expected to have that knowledge.

Exemptions

65.(1) Any person may by means of a written application, in which the reasons are given in full, apply to the Municipality for exemption from any provision of this By-law.

(2) The Municipality may –

- (a) grant an exemption in writing and the conditions in terms of which the exemption was granted, if any, and the period for which such exemption is granted must be stipulated therein;
- (b) alter or cancel any exemption or condition in an exemption; or
- (c) refuse to grant an exemption.

(3) In order to consider an application in terms of subsection (1), an authorised official may obtain the input or comments of the owners or occupants of surrounding premises.

(4) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed in terms of subsection (2), however, if an activity is commenced before such undertaking has been submitted to the Municipality, the exemption lapses.

(5) If any condition of an exemption is not complied with, the exemption lapses immediately.

Appeals

66.(1) A person whose rights are affected by a decision taken by the Head or any authorised official in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons 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, 2000 in response to the appeal.

Delegations

67.(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 sub-section (1) must be effected in accordance with the system of delegation adopted by the council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), subject to the criteria set out in section 59(2) of said Act.

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

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

Repeal of laws

68. (1) The Durban Food By-law published under Provincial notice no. 627 of 1950 commencing on the 14 December 1950 and published in Provincial gazette no. 2323 dated 14 December, 1950, thereafter extended to the entire jurisdiction of the eThekweni Municipality by resolution dated 29th February 2012, made in terms of clause 35 of PN 343 of 2000, gazetted in MN 20 of Provincial Gazette 744 dated 10 May 2012 is hereby repealed.

Short title and commencement

69.(1) This By-Law is called the eThekweni Municipality: Food, Milk and Milk Products By-law, 2022 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 1
SANITARY CONVENIENCES**

Population: The number of staff members and the maximum number of customers whom provision is made to consume food on any premises at any one time	Number of sanitary conveniences to be installed in relation to the population as given in the first column				
	Men			Women	
For a population up to	Toilet	Urinals	Hand washbasin	Toilets	Hand washbasin
15	1	1	1	2	1
30	1	2	2	3	2
60	2	3	3	5	3
90	3	5	4	7	4
120	3	6	5	9	5
	For a population in excess of 120 add 1 toilet, 1 urinal and 1 hand washbasin for every 100 persons			For a population in excess of 120 add 1 toilet for every 50 persons	For a population in excess of 120 add 1 hand washbasin for every 100 persons

Schedule 2
STORAGE OF PERISHABLE FOOD AND FOOD TEMPERATURES

Category	Type of food	Required core temperature of food products that are stored, transported or displayed for sale
Frozen products	Ice cream and sorbet, excluding sorbet which is used for soft serve purposes and frozen fish and fishery products	$\geq - 18\text{ }^{\circ}\text{C}$
	Any other food which is marked as a frozen product	$\geq - 12\text{ }^{\circ}\text{C}$
Chilled products	Raw unpreserved fish, molluscs, crustaceans, edible offal, poultry, meat and milk	$\leq +4\text{ }^{\circ}\text{C}$
	Any other perishable food that must be kept chilled to prevent spoilage	$\leq +5\text{ }^{\circ}\text{C}$
Heated products	Any perishable food not kept frozen or chilled	$\geq + 60\text{ }^{\circ}\text{C}$

Schedule 3
LIST OF FOODSTUFFS AND INGREDIENTS EXEMPTED FROM A DATE OF
DURABILITY

Any alcoholic beverage as described in the Liquor Products Act, 1989 (Act 60 of 1989)
Chewing gum
Confectionary products consisting of flavoured and/or coloured sugars
Fresh fruits and vegetables which have not been peeled or cut or similarly treated
Processed meat products such as biltong and dried sausage which have not been pre-packed
Honey, except for the date the honey was pre-packed
Ready-to-eat flour confectionary, provided that the date of manufacture is indicated on the label or in the direct vicinity where the products are displayed
Sugars
Unprocessed, unpacked fish, unprocessed, unpacked meat and poultry which have not been pre-packed
Vinegar

ETHEKWINI MUNICIPALITY: MUNICIPAL PUBLIC HEALTH BY-LAW, 2022



Adopted by Council on: 28 February 2023

MUNICIPAL PUBLIC HEALTH BY-LAW

To provide measures for managing, controlling, minimising or eliminating municipal health nuisances; to prohibit certain activities or conduct in order to promote a healthy and safe environment; to provide for the repeal of laws and savings; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the Municipality has competence in terms of Part B of Schedule 4 of the Constitution relating to matters such as air pollution and municipal health services, and has the competence in terms of Part B of Schedule 5 of the Constitution in respect of the control of public nuisances;

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 has as one of its objects in terms of Section 152(1)(d) of the Constitution, the promotion of a safe and healthy environment;

AND WHEREAS there is need to develop legislation to deal with the prevention or minimisation of municipal health nuisances within the area of jurisdiction of the Municipality;

NOW THEREFORE the Municipal Council of the eThekweni Municipality, acting in terms of Section 156 read with Schedule 4 (Part B) and 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 INTERPRETATIONS

Definitions

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

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

- (a) a residence;
- (b) a home for the aged which is registered as such in terms of the Older Persons Act;
- (c) 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; or
- (d) any hotel which is registered as a hotel under the Hotels Act;

"animal" means horse, pony, mule, donkey, cattle, pig, sheep, goat, camel, reptile, dog, cat or other domestic animal, indigenous animal, wild animal, exotic animal, poultry and birds, but excludes marine fauna;

"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;

"barber, hairdresser or beautician " means a person who carries on the business of providing any one or more of the following or similar services:

- (a) in respect of the human hair –
- (i) cutting;
 - (ii) shaving;
 - (iii) singeing;
 - (iv) shaping;
 - (v) shampooing;
 - (vi) cleansing;
 - (vii) conditioning;
 - (viii) treating;
 - (ix) chemical reformation including, but not limited to, permanent waving;
 - (x) relaxing;
 - (xi) straightening; or
 - (xii) colouring including, but not limited to –
 - (aa) tinting;
 - (bb) dyeing; and
 - (cc) colouring,whether by permanent, temporary or semi-permanent means, and including the use of colour rinses, shampoos, gels or mousses, and lightening by means of tints, bleaches, highlights or high lifting tints or toners;
- (b) other than by a process contemplated in paragraph (a), removing hair by means of, but not limited to, waxing, chemical compounds (such as, but not limited to, depilatories), electrical or mechanical means, whether or not heat or an appliance or apparatus is used in any of these activities;
- (c) treating hair by means of a trichological process or method;
- (d) adding to hair of natural or artificial hair by means of, but not limited to an extension, board work or a wig;
- (e) shaping, shaving, plucking, treating or tinting eyebrows or eyelashes or applying artificial eyebrows or eyelashes;
- (f) skin care of the face, including, but not limited to, the application of cosmetics;

(g) applying nail care, such as, but not limited to, manicuring, pedicuring, or applying false nails or extensions;

(h) massaging;

(i) bronzing such as by means of, but not limited to, ultraviolet radiation; or

(j) contouring, such as but not limited to, slimming;

"body piercer" means any person who is in the practice of piercing, perforating or cutting a part of the human body for the purposes of creating an opening in which jewellery or other ornamentation may be worn or inserted;

"communicable disease" means a disease resulting from an infection due to pathogenic agents or toxins generated following the direct or indirect transmission of the agents from the source to the host;

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

"dwelling" means any habitable house, room, shed, shelter, boat, structure or any part of which is used or appears intended for use by any human being for sleeping or in which a human being dwells or sleeps and "room" has a corresponding meaning;

"environment" means the surroundings within which humans exist made up of –

(a) the land, water and atmosphere of the earth;

(b) micro-organisms, plant and animal life;

(c) any part or combination of paragraphs (a) and (b) and the interrelationships among and between them; and

(d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

"habitable" in relation to dwelling means a dwelling that is suited for human occupation;

"health compliance certificate" means a certificate issued by the relevant municipal department in relation to an activity carried out in terms of this By-law;

"holder" means the person in whose name any permit, certificate or authorisation has been issued in terms of this By-law;

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

"municipal health nuisance" means a municipal health nuisance as contemplated in subsection 5(1) of this By-law, and **"health nuisance"** 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;

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

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

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

"occupier" means any person who occupies any premises or part thereof, regardless of the title under which he or she occupies, and includes –

- (a) any person in actual occupation of those premises;
- (b) any person legally entitled to occupy those premises;
- (c) in the case of those premises being subdivided and let to lodgers or various tenants, the person receiving the rent payable by such lodgers or tenants whether on the person's own account or as agent for any person entitled thereto or interested therein;
- (d) any person having the charge or management of those premises, and includes the agent of any such person when the person is absent from the Republic of South Africa or his or her whereabouts are unknown; or
- (e) the owner of the premises;

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

"Overcrowding" means –

- (a) a residential occupancy in excess of 12 occupants per sanitary convenience;
- or

(b) occupancy of habitable rooms (being all rooms in a dwelling excluding kitchens, bathrooms and sanitary conveniences) where such occupation exceeds one adult person per 4m² or one child under 10 years of age per 2m²;

"Owner", in respect of the premises, means the—

- (a) person in whose name the premises are registered with the Registry of Deeds;
- (b) 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 (e); or
- (g) 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 (f);

"person" includes any natural person, sphere of government and juristic person;

"premises" means any building, tent or any other structure, together with the land on which such building, tent or other structure is situated, and the adjoining land used in connection therewith and any land without building, tent or any other structure; and includes any motor vehicle, conveyance, ship or boat, whether stationary or not, but only to the extent that anything contemplated or prohibited in this By-law is housed, harboured or carried on in or on such motor vehicle, conveyance, ship or boat;

"public place" means—

- (a) a public road;
- (b) any parking area, square, park, recreation ground, sports ground, sanitary lane, open space, beach, shopping centre on municipal land, unused or vacant municipal land or cemetery which has –
 - (i) in connection with any subdivision or layout of land into erven, lots or plots, been provided, reserved or set apart for use by the public or the owners or occupiers of such erven, lots or plots, whether or not it is shown on a general plan, plan of subdivision or diagram;
 - (ii) at any time been dedicated to the public;

(iii) been used without interruption by the public for a period of at least thirty years expiring after 31 December 1959; or

(iv) at any time been declared or rendered as such by the Municipality or other competent authority; or

(c) a public transportation motor-vehicle,

but will not include public land that has been leased or otherwise alienated by the Municipality;

"public road" means any road, street or thoroughfare or any other place commonly used by the public or to which the public has a right of access for the purposes of vehicular traffic, and includes –

- (a) the kerb line, roadway, road reserve, shoulder or verge, of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare;
- (c) any portion of any such road, street or thoroughfare reserved, prepared or commonly used for pedestrian traffic; and
- (d) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

"residence" means 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 dwelling or mainly for dwelling purposes, but excluding an accommodation establishment;

"South African Police Service Act" means the South African Police Services Act, 1995 (Act No. 68 of 1995);

"tattooist" means any person, including a beautician, who practices the act of puncturing or permanently marking the skin by inserting pigments or indelible ink;

"this By-law" means eThekweni Municipality: Municipal Public Health By-law, 2022; and

"water resource" means a river, spring, or natural channel in which water flows regularly or intermittently, a wetland, lake or dam into which or from which water flows, surface water, an estuary or aquifer and includes any borehole, structure, earthwork or

equipment installed or used for or in connection with storage, distribution, provision or use of water.

Interpretation

2. If there is a conflict of 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—
 - (a) provide legal and administrative measures necessary for the Municipality to discharge its municipal health obligations in terms of Section 152 (d) of the Constitution;
 - (b) regulate certain activities, conduct, processes, or trades which, owing to their nature are likely to pose a risk to the health and safety of any person or persons within the area of jurisdiction of the Municipality; and
 - (c) provide measures for managing, controlling and minimising municipal health nuisances within the area of jurisdiction of the Municipality.

CHAPTER 3 APPLICATION

Application of By-law

4. This By-law applies to all areas which fall under the jurisdiction of the eThekweni Municipality.

CHAPTER 4
MUNICIPAL HEALTH NUISANCES

Municipal health nuisances

5.(1) A municipal health nuisance exists if any activity, condition, situation, premises or thing which, on account of effluent, vapour, smoke, chemical effluvium, odour, noise, vibration, radiation, refuse, waste product, dirt, chemical or biochemical material, microbial infection, vermin, vegetation, overcrowding, lack of proper general hygiene, ventilation, lighting, design, or on account of any other cause or practise whatsoever, is likely to endanger life or health or adversely affect the well-being or reasonable comfort of a person or community, and includes, but is not limited to—

- (a) accumulation of waste in such a manner or in such quantity that it may cause injury or danger to health;
- (b) discharging of wastewater unlawfully onto any land, water resource including the sea through a pipe, canal, sewer or other conduit or by any other means;
- (c) using, keeping or disposing organic matter or animal waste in a manner that attracts vermin or pests such as, but not limited to, rats, mice, flies and mosquitoes;
- (d) keeping a water pool, ditch, gutter, dung pit or heap such that it is so foul or so situated or constructed that it may cause injury or danger to health;
- (e) causing a building, structure or enclosure to be so constructed, situated, used or kept such that it may cause injury or danger to health;
- (f) causing or permitting a building, structure or enclosure to be infested with pests or conditions that are conducive and contribute to the spread of a contagious and communicable disease;
- (g) allowing unhygienic conditions to exist to the extent that it may cause injury or danger to health;
- (h) occupying or cause to be occupied a dwelling or any other premises without making provision for toilet facilities and proper and sufficient supply of water;
- (i) keeping a carcass or the remains of an animal unburied or failure to have it suitably disposed of for more than 24 hours after its death;
- (j) causing or allowing dust generated on a premises to cause a health nuisance;
- (k) failing to make provision for sufficient ventilation so as to destroy or render harmless as far as practicable any gases, vapours, dust, fumes or other impurities generated which may cause injury or danger to health;
- (l) causing or allowing overcrowding;

- (m) poor or insufficient lighting to such a degree that it may cause injury or danger to health;
- (n) causing or allowing effluvia to be discharged or emitted such that they may cause injury or danger to health;
- (o) accumulating or storing building rubble, disused building materials, wood products , derelict or disused motor vehicles, scrap metal including recyclable materials;
- (p) causing or allowing dampness in any foundation, wall or floor;
- (q) causing or allowing leaks in the roof of the building;
- (r) causing or allowing structural defects in the foundations, walls, floors or roofs of the building;
- (s) causing or allowing structural defects in the ditch, gutter, yard or drain for carrying off surface or other wastewater from such premises;
- (t) failing to provide a sufficient supply of wholesome water; or
- (u) carrying on or conducting any trade, calling or manufacture in such a way or manner as to be a municipal nuisance or likely to be injurious to public health.

(2) No person may cause a municipal health nuisance.

(3) The occupier of a premises who installs, maintains and operates an air-conditioning appliance must ensure that such appliance is so installed, maintained and operated so as to preclude –

- (a) the generation of noise, smell or vibration which constitutes a nuisance to any occupier of such premises or neighbours within its vicinity; and
- (b) the discharge or generation of condensation onto a street or public place.

(4) No person may–

- (a) organise or allow an activity, event, practise or function on premises, which causes or is likely to cause a municipal health nuisance; or
- (b) use, cause or allow premises to be used for any purpose whatsoever which by its nature or otherwise or by reason of its consequences creates or is likely to create a municipal health nuisance.

(5) No person may in a public place activate, introduce, handle or use any matter, material, substance, object or thing which by its nature or by reason of the manner of its introduction or handling creates or is likely to create a municipal health nuisance.

(6) No person may in a public place carry or convey any material, substance, object or thing of whatever form or nature, which is or may become dangerous or injurious to health, unless it is covered with a suitable material to prevent the creation of any municipal health nuisance.

(7) The provisions of subsections (3) to (6) do not apply if any activity, conduct, event, practise, condition or situation as contemplated in those subsections, is authorised or permitted by law—

- (a) to the extent so authorised or permitted; and
- (b) subject to any conditions imposed thereby.

(8) The owner or occupier of a premises must ensure that a municipal health nuisance does not exist or occur on his or her premises and must, within 24 hours of becoming aware of the existence of a municipal health nuisance on the land or premises—

- (a) take measures to eliminate the municipal health nuisance; or
- (b) if he or she is unable to eliminate the municipal health nuisance, take steps to the satisfaction of the Municipality to reduce the risk to municipal health, and report the existence of the municipal health nuisance to the Municipality.

(9) Notwithstanding anything in this By-law, the owner of premises is deemed to have created a situation or condition which causes or has caused a municipal health nuisance in or on his or her premises until or unless the contrary is proved.

(10) The owner or occupier of a premises must ensure that every well, hole, pit, reservoir, pond, quarry or excavation thereon is not filled in a way, or with any material, that may cause any other well, borehole or underground water source to be polluted or contaminated to an extent that may create a municipal health nuisance.

(11) The owner or occupier of a premises must cause all waste to be placed in waste receptacles provided by such owner or by the responsible authority and to be disposed of in a manner contemplated in terms of the municipal by-law dealing with waste removal and any other applicable law.

(12) Notwithstanding the provisions of subsection (7), the Municipality may, in order to avert or remove any significant municipal health nuisance, perform any necessary act and recover costs from the owner or occupier of the premises concerned.

Cleanliness

6.(1) The owner or occupier of premises must at all times maintain such premises in a clean and hygienic condition.

(2) Whenever any premises are unoccupied or occupied by vagrants, squatters or other unauthorised persons, the owner of such premises must at all times maintain all parts thereof in a clean and tidy condition.

(3) The owner of a premises must—

(a) maintain all buildings, yard, hardened areas and storm water drains in good order and condition;

(b) maintain all sanitary fitments, waste pipes, soil pipes, drains, drainage connections and other drainage fittings and pipes, together with the necessary accessories, in good order and condition;

(c) provide suitable and effective means of drainage and disposal of all waste liquids and storm water;

(d) ensure that every room or other structure or accommodation used for human habitation or occupation is adequately lighted and ventilated in accordance with the requirements of the National Building Regulations and Standards Act; and

(e) clean any exterior part of the premises when so required by the Municipality.

(4) The owner or occupier of premises must, on being served with a notice signed by an authorised official, carry out such measures as may be specified therein for the cleaning or tidying of the premises within the time specified in the notice.

(5) If the owner or occupier refuses to carry out the measures specified in a notice under this By-law or fails to do so within the time specified, the Municipality may act in terms of subsection 5(12) in order to avert or remove any significant municipal health nuisance and thereafter recover costs.

Floors, ventilation, lighting and overcrowding

7.(1) No person may occupy a premises unless such premises—

(a) has windows which are equal to one tenth of the floor space; and

(b) is constructed in a manner that at least one half of every window can be opened at all times into the external air.

(2) No person shall occupy any dwelling of which the height of every living or sleeping room is less than 2.4m from the floor to the lowest part of the ceiling or roof.

(3) No person who is the owner or occupier of any dwelling or habitable room shall permit such dwelling or room to be so overcrowded as to constitute a nuisance or is injurious to health.

(4) Any dwelling or habitable room which does not provide a minimum of 4m² per adult occupant and 1m² per child under 10 years of age, simultaneously occupying such dwelling or room shall be deemed to be overcrowded.

Mosquitoes, flies, rats and other vermin

8.(1) The owner or occupier of premises must prevent mosquitoes, flies, rats or other vermin from developing or being harboured thereon.

(2) The owner or occupier of premises must, on being served with a notice by the Municipality, carry out such measures as may be specified therein for the removal of conditions favourable to the prevalence or multiplication of mosquitoes, flies, rodents or other vermin, or their harbouring thereon, within the time specified in the notice.

(3) The owner or occupier of a premises must, on being served with a notice by the Municipality, carry out such measures as may be specified therein for the extermination of infestation of mosquitoes, flies, rodents or other vermin, within the time specified in the notice and the owner or occupier of premises must maintain documentary evidence of such extermination measures for a period of 6 months from the date of which the notice was served.

Weeds, undergrowth and repulsive vegetation

9.(1) The owner of any vacant premises and the owner or occupier of any occupied premises must destroy or cut down and remove therefrom all grass or weeds and the undergrowth of bush growing on such land or premises if the overgrowth is causing or is deemed likely to cause a public health nuisance.

(2) The Municipality may serve a notice on the owner or occupier of premises requiring him or her to comply with the provisions of subsection 1.

(3) If a person refuses or fails to carry out any measures necessary to avert or remove a municipal nuisance caused or likely to be caused by non-compliance with subsection (1), the Municipality may act in terms of section 5(12) in order to avert or remove any significant municipal health nuisance and thereafter recover costs.

Sanitation

10.(1) An owner of a premises must provide suitable water closets, sufficient in number as determined by National Building Regulations and Buildings Standards Act, for persons making use of the premises.

(2) The owner or occupier of a premises must at all times keep all water closets on his or her premises in a clean and sanitary condition.

(3) During the erection or alteration of any building, the employer must provide temporary adequate water closets for the use of his or her employees. The temporary water closet must be removed immediately upon the completion of the said building.

(4) No person shall occupy or let any dwelling which does not have a constant supply of water in compliance with the Municipality's by-law relating to water supply.

CHAPTER 5 PUBLIC SWIMMING FACILITY

Requirements for premises

11.(1) The person in control of a public swimming facility must at all times—

- (a) keep the premises concerned in a safe, clean and sanitary condition; and
- (b) ensure that the water is purified, treated and maintained in accordance with the requirements and standards mentioned in this By-law.

(2) No person may operate a public swimming facility in or on any premises unless—

- (a) there are readily accessible change rooms, showers toilet facilities and wash hand basins provided separately for each sex in compliance with the National Building Regulations and Building Standards Act;

- (b) such facility is surrounded by a wall or fence as prescribed by the National Building Regulations and Building Standards Act;
- (c) the surface of the floor area surrounding such facility is constructed of an impervious, non-slip material;
- (d) an approved chemical gas mask is provided at the chlorinator installation;
- (e) an oxygen or air breathing apparatus is provided; and
- (f) an adequate number of refuse receptacles are provided on the premises.

Duties of operator of public swimming facility

12.(1) Every operator of a public swimming facility must—

- (a) keep the premises concerned in a safe, clean and sanitary condition and in good repair at all times;
- (b) provide a properly maintained and approved first-aid box or kit in a prominent, easily accessible and protected position;
- (c) purify, treat and maintain the water to an adequate quality level at all times;
- (d) provide and maintain, in good working order, equipment for testing the quality of water;
- (e) undertake routine tests on the water quality in the facility; and
- (f) maintain a daily record of the water quality.

(2) The operator of a public swimming facility must ensure that the water in such facility complies with the following requirements:

- (a) the water must be free from floating, suspended or settled debris or swimming organisms;
- (b) the walls, floor, access ladders or steps and gutters must be free from slime and algae;
- (c) the pH value of the water must be not less than 7 and not greater than 8;
- (d) where chlorine-based disinfectants are used, a minimum free available chlorine residual of 0,5 mg/l, with a maximum free available chlorine residual of 3 mg/l, must be maintained;
- (e) if a disinfectant other than chlorine is used, the residual level must be equivalent in effect to the requirements of paragraph (d);
- (f) the total viable bacteriological count of any sample submitted for analyses, must not exceed 100 organisms per ml of water; and
- (g) escherichia coli type 1 bacteria must not be present in any 100 ml of water.

(3) Every operator of a public swimming facility must designate a person who is qualified and proficient in—

- (a) lifesaving;
- (b) rendering first aid;
- (c) the use of a resuscitation equipment;
- (d) the operation of the swimming facility; and
- (e) the testing and monitoring of the safety of the water.

Water supply

13.(1) Unless the prior written approval of the Municipality has been obtained, no person operating a public swimming facility may use water from a source other than a municipal supply to clean, fill or maintain the water level in such facility.

(2) The Municipality may at any reasonable time, cause the samples of the water from the public swimming facility to be taken at intervals which it considers appropriate for the purpose of a chemical analysis or bacteriological examination of that water.

Prohibited behaviour

14.(1) No person may—

- (a) interfere with the operator of a public swimming facility in the execution of his or her duties;
- (b) allow any dog or other pet belonging to him or her or under his or her care to enter or to remain within the premises of a public swimming facility, unless it is a guide dog accompanying a blind person;
- (c) enter or remain in any premises of a public swimming facility if he or she knows or suspects that he or she may be suffering from any infectious disease; or
- (d) urinate, defecate, spit or blow his or her nose in a public swimming facility.

CHAPTER 6

BARBERS, HAIRDRESSERS, BEAUTICIANS, BODY PIERCERS OR TATTOOISTS

Health Compliance Certificate

15.(1) A person may not operate as a body piercer or tattooist, or operate a tattoo or body piercing establishment, without being issued with a health compliance certificate from the Municipality.

(2) Every person who is an informal trader offering the services of or operating as a barber, hairdresser, beautician, body piercer or tattooist must further obtain permission from the Municipality to trade as an informal trader as regulated by the Municipality's by-law on Informal Trade.

(3) In the case of an existing premises or facility—

(a) an authorised official may grant an extension of time to a person who was operating a premises or facility before the date of commencement of this By-law so that such person may comply with the provisions of this By-law within 6 months of the date of commencement; and

(b) the Municipality may, in any case where reasons to its satisfaction are given, extend the period stated in paragraph (a) by not more than a further 12 months.

(4) No person may operate a facility or any premises in relation to this By-law unless he or she has been issued with a health compliance certificate by the Municipality confirming that the premises, and the facilities and services available on those premises, comply with this By-Law.

(5) Every health compliance certificate must contain the following minimum information:

- (a) the name of the business;
- (b) the name of the owner;
- (c) the contact details of the business and owner;
- (d) the nature or type of business;
- (e) the address of the business;
- (f) the validity period of the certificate; and
- (g) the confirmation of compliance with this By-law.

(6) A health compliance certificate must be displayed on every approved premises in such a way that it is clearly visible at all times to any person entering the premises.

(7) The authorised official may issue a health compliance certificate if he or she is satisfied that the—

- (a) premises on which it is proposed to operate the facility; and

(b) facilities and services available on those premises, comply with this By-law.

(8) A health compliance certificate is issued in respect of specific approved premises. This means that a health compliance certificate—

- (a) becomes invalid if a health compliance certificate holder ceases to operate a facility from the approved premises;
- (b) is not transferable to any other person;
- (c) is not transferable to, or valid for, any other facility or premises which the health compliance certificate holder may own, have an interest in or subsequently own or acquire an interest in;
- (d) is not transferred when the holder of the health compliance certificate disposes of the facility concerned or of the approved premises; and
- (e) may not be bequeathed by the health compliance certificate holder to any heir or legatee.

(9) If a health compliance certificate holder wishes to move the facility to premises other than the approved premises, he or she must apply for and obtain a new health compliance certificate in respect of those new premises.

(10) If a health compliance certificate holder wishes to make alterations to premises to which a health compliance certificate relates, he or she must—

- (a) bring his or her intention to the attention of the Municipality before commencing the alterations; and
- (b) apply for and obtain a new health compliance certificate before beginning to operate a facility from those altered premises.

(11) In the event that a premises or facility has been issued with a health compliance certificate and subsequently no longer complies with the terms and conditions imposed by this By-law, the Municipality may give the certificate holder notice to comply with the terms and conditions of the By-law and suspend the health compliance certificate until such time as the facility or premises becomes compliant.

(12) Where there is non-compliance in terms of subsection (11) and the said premises or facility has not complied within the specified period, the Municipality may revoke the health compliance certificate.

(13) Notwithstanding subsection (12), the Municipality may immediately revoke a health compliance certificate without giving the certificate holder a notice to comply where there is imminent harm or health hazard.

Health and hygiene requirements

16.(1) A person may not use the premises of a salon or any other similar place for a purpose other than for the carrying on of an authorised business of a barber, hairdresser, beautician, body piercer or tattooist.

(2) A person who carries on the business of a barber, hairdresser, beautician, body piercer or tattooist in a salon or any other place, must—

- (a) at all times keep a first-aid box or kit on the premises and treat an injury or wound which may occur on the premises;
- (b) have available on the premises, equipment to sterilise an instrument that has come into contact with human skin, hair or bodily fluid;
- (c) ensure that only professional tattooing and body piercing machines designed and assembled in a manner which prevents contamination of sterilised needle sets may be used for applying permanent tattoos or body piercing;
- (d) ensure that all tubes and needles used in connection with tattooing and body piercing are stored in single service, sterile, sealed autoclaved bags which must be opened in the presence of the client;
- (e) ensure that all clip cords and spray bottles have triggers and grasp areas, which grasp areas must be protected by plastic covering which must be disposed of after use on each client;
- (f) disinfect the instrument by applying a suitable disinfectant after each use of a cut-throat razor, pair of scissors, comb, brush, roller, nail file, clippers, or other instrument which was applied to the human hair, nail or skin;
- (g) wear new disposable latex or nitrile examination gloves for the duration of a procedure where he or she implants hair, pierces or tattoos skin, or uses a chemical or chemical compound in an activity;
- (h) wash his or her hands with a suitable disinfectant before and after rendering any service to a client;
- (i) directly after treatment of the client, clean and disinfect a surface that has been contaminated by bodily fluid;
- (j) dispose of any disposable glove or other disposable material in an approved manner after each use;

- (k) at least once a day wash, with a disinfectant, aprons and caps and any other material items used in the operation of the business, all surfaces such as, but not limited to floors, counters and chairs;
- (l) dispose of all wastewater, sharp instruments, bloodied and otherwise contaminated disposable towels and paper in an approved manner;
- (m) store sharp instruments such as, but not limited to, a razor, blade or needle in a separate container;
- (n) after each use, wash and clean all cloth towels;
- (o) generally keep the premises, tools, equipment and clothing in a hygienic condition at all times;
- (p) after every service, collect waste such as, but not limited to, hair clippings and towelling paper, and store or dispose of such waste in accordance with the Municipality's by-law dealing with waste removal;
- (q) ensure that no animal, excluding a guide dog accompanying a blind person, enters the premises; and
- (r) provide his or her employees with protective clothing, train any person working on the premises, and ensure that all employees comply with the provisions of this By-law.

Facilities requirements

17. A person who carries on the business of a barber, hairdresser, beautician, body piercer or tattooist in a salon or any other place, must ensure that the facilities on the premises comply with the following requirements:

- (a) basins, with a supply of running hot and cold potable water, must be available for the washing of hair and hands: Provided that—
 - (i) where there is no running water available, a sealable container of potable water must be provided for the washing of hair and hands; and
 - (ii) where there is no running hot water a suitable water boiler or kettle must be provided;
- (b) lighting, ventilation, water and toilet facilities as prescribed in the National Building Regulations and Buildings Standards Act (as amended) must be provided or in the case of an informal trader, the business must be within a reasonable distance from a public toilet facility as contemplated in the Municipality's by-law dealing with informal traders;
- (c) shelves, counters, table-tops or other fixtures on which instruments are placed must be constructed of or covered by impermeable material that is easy to clean;
- (d) adequate facilities for the storage of clothes, instruments and appliances must be provided;

- (e) facilities for the safe disposal of wastewater must be provided;
- (f) the walls, partitions and floors must be constructed of materials that are easy to clean;
- (g) every working station must contain a disinfectant with a minimum concentration with 0.1 % (1000ppm) sodium hypochlorite (bleach), or 70% ethanol should be used to disinfect; and
- (h) the equipment must be kept suitably separated or insulated or isolated from any food preparation area.

CHAPTER 7

DRY-CLEANING AND LAUNDRY BUSINESSES AND DEPOTS

Requirements for premises

18. (1) A person may not use a dry cleaning and laundry premises for any other purpose than that of its authorised business usage.

(2) A person may not conduct a dry-cleaning or laundry business on premises that do not comply with the following requirements:

- (a) a work-room or work-area used for housing dry-cleaning machines, washing-machines, ironing boards, presses and other fixed or movable equipment, with a minimum unobstructed floor area of 2,5 square metres per person employed on the premises, must be provided;
- (b) a separate areas for marking clean and dirty articles must be provided with—
 - (i) tables with an impervious surface or impervious cover;
 - (ii) washable containers for dirty articles; and
 - (iii) hanging rails and shelves constructed of an impervious material in the area for marking clean articles;
- (c) a separate room or area with separate designated counters, with impervious surfaces, must be provided for the receipt and dispatch of articles;
- (d) a store-room or facility for the storage of packing material and other articles must be provided and equipped with adequate packing shelves of which the lowest shelf must be at least 250 (two hundred and fifty) millimetres above floor level;
- (e) separate change-rooms for males and females, where 5 (five) or more persons of the same sex are employed, must be provided containing—
 - (i) a metal locker for every employee;

- (ii) a wash-hand basin provided with a supply of running hot and cold potable water; and
- (iii) a supply of soap and disposable towels at every wash-hand basin;
- (f) if no change-room has been provided in terms of paragraph (e)–
 - (i) a wash hand basin with a supply of potable hot and cold water, must be provided in an accessible position; and
 - (ii) a metal locker must be provided for every employee in the work area;
- (g) a tea kitchen with a single-basin stainless steel sink, with a supply of running hot and cold potable water, must be provided;
- (h) separate toilets for males and females must be provided;
- (i) every toilet and change-room must be clearly gender designated;
- (j) all internal walls must be constructed of an impervious material, brought to a smooth finish and painted with a light-coloured washable paint;
- (k) all ceilings must be dust-proof, smoothly finished, and painted with a light-coloured washable paint;
- (l) all floor surfaces must be constructed of cement or some other adequate impervious material, brought to a smooth finish and properly drained;
- (m) the minimum height from floor to ceiling of any room or area must be 2,4 metres;
- (n) adequate lighting and ventilation, as prescribed by the National Building Regulations and Building Standards Act must be provided;
- (o) all machinery and equipment must be equipped with adequate suction fans to remove any noxious gas, steam and hot air from any room and to release it in the open air in an adequate manner;
- (p) all machinery and equipment must be placed so that there is free access to all areas around and underneath each machine or item of equipment, to enable those areas to be adequately cleansed; and
- (q) a separate pre-rinsing area must be provided on any premises where articles soiled with human excretion are laundered.

Coin-operated laundries

19.(1) Any machinery provided on the premises for the purposes of coin-operated laundries must be installed in accordance with the applicable Regulations made in terms of the Occupational Health and Safety Act and any other applicable law.

(2) The premises must comply with the provisions of paragraphs 18 (2)(a), (h), (i), and (j) – (q).

Hygiene and housekeeping

20. Any person conducting a dry-cleaning or laundry business or in charge of premises on which a dry-cleaning, laundry or receiving depot exists, must—

- (a) keep the premises, all fittings, equipment, appliances, machinery, containers and business vehicles in a clean, hygienic and good condition at all times;
- (b) separate dirty articles from clean articles at all times, including when in transit;
- (c) use a change-room solely for changing;
- (d) ensure that every person who handles clean or dirty articles wears adequate protective clothing at all times;
- (e) keep protective clothing in a clean and sound condition at all times;
- (f) store protective clothing in a locker when it is not being worn;
- (g) ensure that the premises are not directly connected to any area from which contamination might occur;
- (h) comply at all times with the requirements of the Occupational Health and Safety Act and Municipality's by-law dealing with the regulation of air quality;
- (i) place all piping in the building, not chased into the walls, at least 100 millimetres away from all walls or floors and comply with the provisions of the National Building Regulations and Building Standards Act;
- (j) insulate all steam piping with adequate material;
- (k) dispose of all wastewater in an approved manner;
- (l) keep the dry-cleaning and laundry premises pest and rodent proof;
- (m) keep general waste on the dry-cleaning and laundry premises in appropriate containers with tight-fitting lids and must be dealt with in accordance with the requirements of the Municipality's by-law dealing with waste removal and other applicable law;
- (n) have a vector control programme in place; and
- (o) have the requisite fire extinguishers available in terms of the Municipality's by-law dealing with fire control.

**CHAPTER 8
ENFORCEMENT**

Powers of authorised officials

21.(1) The authorised official may at all reasonable times enter any land or premises on which a nuisance in terms of this By-law occurs or is alleged to occur or to have occurred and–

- (a) inspect or monitor the land or premises;
- (b) question the owner, occupier or person in control of the land or premises;
- (c) serve any compliance notice to the owner, occupier or person in control;
- (d) take photos of any items used on the land or in the premises to cause a nuisance;
- and
- (e) take samples or other evidence in respect of any nuisance caused.

(2) A duly authorised official may, in respect of a nuisance caused or alleged to be caused in a public place, instruct a person to cease an act or conduct which causes such nuisance, with immediate effect.

(3) If it appears to the authorised official that it is not possible for the offending person to comply with his or her instructions forthwith, the authorised official must issue a warning notice in the form prescribed by the Municipality, instructing the offending person to cease an act or conduct causing nuisance within a reasonable time period.

(4) When issuing a warning notice, the authorised official must procure the signature of the offending person confirming receipt of a warning notice.

(5) The authorised official must inform the offending person that–

- (a) a signature of the offending party in terms of subsection (4) does not on its own constitute an admission of guilt; and
- (b) it is an offence in terms of this By-law to refuse to sign a warning notice issued by an authorised official.

**CHAPTER 9
OFFENCES AND PENALTIES**

Offences

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

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

- (b) contravenes any conditions, restrictions or prohibitions imposed in terms of this By-law;
- (c) fails to comply with the terms of any notice or signage displayed in terms of this By-law;
- (d) 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
- (e) fails to obey any lawful instruction or direction given to him or her in terms of this By-law.

(2) A person is guilty of a continuing offence if he or she continues with an offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence.

Penalties

23.(1) Any person who is convicted of an offence under this By-law is liable to a fine of an amount not exceeding R100 000 or to imprisonment for a period not exceeding 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 10 GENERAL PROVISIONS

Appeals

24.(1) A person whose rights are affected by a decision taken by the Head or any authorised official in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons 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, 2000 in response to the appeal.

Repeals

25. (1) The Public Health By-law (provincial notice no. 225 of 1911, date of commencement: 27 December 1911), thereafter extended to the entire jurisdiction of the eThekweni Municipality by resolution dated 29th February 2012, made in terms of clause 35 of PN 343 of 2000, gazetted in MN 20 of *Provincial Gazette* 744 dated 10 May 2012 is hereby repealed.

Delegations

26.(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 sub-section (1) must be effected in accordance with the system of delegation adopted by the council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No.32 of 2000), subject to the criteria set out in section 59(2) of said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the—
(a) entity or person issuing the delegation or sub-delegation;
(b) recipient of the delegation or sub-delegation; and
(c) conditions attached to the delegation or sub-delegation.

Short title and commencement

27.(1) This By-Law is called the eThekweni Municipality: Municipal Public Health By-law, 2022 and takes effect six months from the date of publication thereof in the *Provincial Gazette* or

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on such earlier date as may be determined by the publication of a commencement notice in the *Provincial Gazette*.