

eThekweni, South Africa

## Accommodation Establishment By-law, 1993

Legislation as at 17 December 1993

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Accommodation Establishment By-law, 1993

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# eThekweni South Africa

## Accommodation Establishment By-law, 1993

Published in KwaZulu-Natal Provincial Gazette 4941 on 17 December 1993

**Commenced on 17 December 1993**

*[This is the version of this document from 17 December 1993.]*

*[The area of application of this by-law was extended to the whole area of jurisdiction of the eThekweni Municipality by PN 469 of 5 April 2007.]*

The City Council of the City of Durban has in terms of section 268 of the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974); made the following By-laws—

### 1. Definitions

In these By-laws, unless the context otherwise indicates—

**"accommodation establishment"** means any premises in or upon which the business of supplying lodging with or without meals for reward is conducted for more than four persons, but does not include—

- (a) self-contained units of accommodation such as flats or maisonettes;
- (b) a home for the aged which is registered as such in terms of the Aged Persons Act, 1967 (Act 81 of 1967);
- (c) a hostel which is ancillary to and under the control of a school, university or other educational establishment; or
- (d) an hotel which is registered as an hotel under the Hotels Act, 1965 (Act 70 of 1965); "certificate holder" means a person who is the holder of a valid registration certificate issued in terms of section 3 (6) and includes in his absence from the premises a responsible person referred to in section 9;

**"Council"** means the City Council of the City of Durban;

**"designated officer"** means the employee of the Council appointed by it to administer these By-laws and includes any other employee authorised in law to act in his name and on his behalf;

**"National Building Regulations"** mean the regulations made in terms of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977);

**"nuisance"** means a nuisance as defined in section 1 of the Ordinance;

**"premises"** means premises in or upon which the business of an accommodation establishment is or is to be conducted together with the land on which the same is situated and includes any outbuildings on such land;

**"prescribed fee"** means a fee prescribed by the Council by resolution from time to time;

**"prescribed form"** means a form prescribed and made available by the Council;

**"registration certificate"** means a registration certificate issued in terms of section 3 (6);

**"responsible person"** means a person appointed as such in terms of section 9 (1); and

**"the Ordinance"** means the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974).

## 2. Application of By-laws

- (1) No person shall conduct a business which involves the supply of accommodation in an accommodation establishment unless he is in possession of a valid registration certificate issued to him by the Council in terms of [section 3](#).
- (2) A person who is at the date of commencement of these By-laws conducting a business referred to in subsection (1) shall within six months of that date, or within such extended period as the Council may on application made prior to the expiry of the said period of six months in writing allow, apply for registration of such business in terms of [section 3](#) and if he fails to do so or his application is refused, he shall if he continues to conduct such business after the expiry of that period or after such refusal be deemed to have contravened subsection (1).
- (3) A person whose business has been registered in terms of [section 3](#) shall in the conduct of his business comply with all the provisions of these By-laws and with the limitations, restrictions, terms and conditions imposed upon the approval of the registration of his business and if he fails to do so he shall be guilty of an offence for which the penalties referred to in [section 18](#) shall be applicable.

## 3. Applications for registration

- (1) A person who is referred to in [section 2](#) (2) and a person who intends conducting a business involving the supply of accommodation at an accommodation establishment shall apply for registration of his business or proposed business to the designated officer in writing on the prescribed form and such application shall be accompanied by—
  - (a) a site plan;
  - (b) a layout plan of the building or buildings on the premises indicating—
    - (i) the dimensions and floor area of each room or other distinct part of the premises and the use to which it is to be put;
    - (ii) the maximum number of persons to be accommodated in each room intended for use as a bedroom as determined in accordance with the provisions of [section 13](#);
    - (iii) the location of cooking facilities, bathrooms, showers, toilets and laundry facilities;
    - (iv) the position of lighting and electrical socket outlet points, electric cooking appliances and electric water heaters, if applicable;
    - (v) the siting of hose reels, fire hydrants and portable fire extinguishers in compliance with the requirements of the National Building Regulations;
    - (vi) the location of emergency routes provided in accordance with the National Building Regulations for escape from the building in the event of fire, reflecting—
      - (aa) all doors, passages, ramps and stairs which are components of such routes and indicating their widths;
      - (bb) the fire resistance of the elements constituting such components;
    - (vii) the siting of all sanitary fixtures, which shall comply with the requirements of Part P of the National Building Regulations; and
  - (c) the prescribed application fee which shall not be refundable;

Provided that—

- (i) the designated officer may require an applicant to submit such other plans, documents and information as he deems necessary for the purpose of considering any application or a particular application.

- (ii) no person may apply for or be granted registration within six months after the cancellation in terms of [section 7](#) or section 18 (3) of registration effected either in his name or in that of a company, close corporation or partnership of which he is or was a member.
- (2) The application shall be signed by the person who intends to conduct the business on the premises or his authorised agent and in the case of the latter he shall annex a copy of his authorisation to the prescribed form.
- (3) If the applicant is a juristic person the application shall be accompanied by a certified copy of the resolution of the executive body of such person authorising the making of the application.
- (4) If the applicant is not the registered owner of the premises, the application shall be accompanied by a certified copy of the lease or other document from which he derives his right to occupy the premises.
- (5) The designated officer shall convey his decision on an application made in terms of subsection (1) within 30 days of the date of receipt of the application or within such extended period as may be approved by the Council.
- (6) Upon approval of an application, the designated officer shall register the business to which the application relates and issue a registration certificate to the applicant on the prescribed form.
- (7) If the designated officer refuses an application, the applicant may within 30 days of the date of the notice conveying such refusal to him, appeal to a committee appointed by the Council for the purpose, such committee to comprise three persons, of whom one—
  - (a) shall be an independent person who is a retired judge of the Supreme Court, a retired magistrate or a person who has practiced as an advocate or attorney for at least 7 years;
  - (b) shall be a councillor; and
  - (c) shall be a person with appropriate knowledge or experience nominated from time to time by the Durban Regional Chamber of Business or, if that body ceases to exist, a body having similar objectives which is approved by the Council;and alternates may be appointed or nominated in each case to act in the absence of a member.
- (8) The member referred to in subsection (7) (a) or in his absence his alternate, shall be the chairman of the committee.
- (9) A quorum of the committee shall be three.
- (10) The members of the committee shall hold office until replaced by the Council or, in the case of the member referred to in subsection (7) (c), until the body referred to in that subsection nominates another person for membership of the Committee.
- (11) In granting an application for registration the designated officer or in the case of an appeal in terms of subsection (7), the committee, may impose such limitations, restrictions, terms and conditions as he or it deems fit in furtherance of the aims of these By-laws.
- (12) An application may be refused on the grounds that the premises do not comply with the requirements of these By-laws or that the applicant is not a fit and proper person to conduct an accommodation establishment business.
- (13) A certificate holder shall within twenty-one days of any such change notify the designated officer of any change in the information reflected in the application submitted by him in terms of subsection (1) or on any plan or in any document submitted therewith.

#### 4. Display of registration certificate

A person to whom a registration certificate has been issued in terms of these By-laws shall publicly display such certificate at all times in the office or reception area of the accommodation establishment to which it relates.

#### 5. Validity of registration

A registration certificate issued in terms of [section 3](#) (6) and the registration to which it relates shall remain valid for as long as the accommodation establishment business continues to be conducted on the premises to which it relates by the person to whom it was issued unless it is cancelled in terms of [section 7](#) or is cancelled by order of court in terms of [section 18](#).

#### 6. Transfer of business

- (1) In the event of the transfer of a business relating to the conduct of an accommodation establishment in respect of which a registration certificate has been issued in terms of [section 3](#) or upon any other change in the identity of the certificate holder, the transferee or, in the case of a change in identity, the person who will in future conduct the business shall forthwith apply to the designated officer on the prescribed form for the registration of the business and the issue to him of a registration certificate in his name; Provided that the proviso to [section 3](#) (1) shall mutatis mutandis apply to such person.
- (2) An application made in terms of subsection (1) shall be accompanied by such plans, documents and other information as the designated officer may have reason to require in accordance with these By-laws, together with the prescribed fee.
- (3) Upon receipt of an application made in terms of subsection (1) the designated officer shall, if he is satisfied that the premises comply with the requirements of these By-laws and that the applicant is a fit and proper person to conduct the business, register the business and issue a registration certificate in the name of the applicant.

#### 7. Cancellation of registration

- (1) If a certificate holder or a responsible person referred to in [section 9](#)(1) or either of them has on three separate occasions within any period of 12 months committed a breach of any of the following —
  - (a) a law referred to in [section 8](#) (1);
  - (b) paragraphs (a), (c), (d), (h), (i), (j), (k), (l), (n), (o), (q) and (r) of [section 15](#) (1),for which he is convicted, the designated officer may, if in his opinion such breach has in each case caused or is likely to cause a threat to the health or safety of persons on the premises of the accommodation establishment concerned, or a nuisance, after notice to the certificate holder calling on him to show cause within a period specified in the notice why he should not do so, cancel his registration, whereupon the certificate issued to that person shall automatically cease to be valid.
- (2) A certificate holder whose registration has been cancelled in terms of subsection (1) may within 21 days of the date of the notice conveying such cancellation to him appeal in writing to the committee appointed by the Council in terms of [section 3](#) (7) and the decision of that committee shall be final.
- (3) Unless the designated officer decides otherwise, cancellation of registration in terms of subsection (1) shall not take effect until expiry of the period of the 21 days referred to in subsection (2) or, in the event of an appeal in terms of that subsection, until the date on which the committee confirms the cancellation.

## 8. Compliance with laws

- (1) If the certificate holder in the conduct of an accommodation establishment business commits a breach of any law the nature of which constitutes a threat to the health or safety of persons or a nuisance, such breach shall be deemed to be a breach referred to in [section 7](#) (1).
- (2) In the event of the approval of any plan involving the alteration of the premises in terms of section 7 of the National Building Regulations and Building Standards Act, 1977 ([Act 103 of 1977](#)), which will when implemented result in any change to the number or size of bedrooms depicted as such on the plan lodged in terms of [section 3](#)(1), the certificate holder shall within 21 days of the approval of such plan lodge a copy thereof with the designated officer who may amend the plan lodged in terms of [section 3](#) (1) (b) accordingly.
- (3) The certificate holder shall not—
  - (a) make or cause, permit or allow to be made any alteration to the premises or to the internal arrangement of rooms and other components of the premises;
  - (b) introduce partitions in the premises or alter existing partitions or cause, permit or allow the same to be done;

if the effect of such act will be to interfere with or render less effective the emergency routes referred to in [section 3](#) (1) (b) (vi) and he shall not make any alteration or cause, permit or allow any alteration to be made to any such emergency routes without the prior written consent of the designated officer.
- (4) The certificate holder shall not keep or cause, allow or permit the keeping of any flammable liquid or substance as defined in the Council's By-laws relating to Fire Prevention and Flammable Liquids and Substances the keeping of which requires authority in terms of any law without that authority and without giving notice in writing to the designated officer prior to the keeping of such liquid or substance.

## 9. Appointment of a responsible person

- (1) A certificate holder shall be responsible for ensuring that at all times either he or a responsible person appointed by him to act on his behalf is present on the premises.
- (2) The certificate holder shall within seven days inform the designated officer in writing of the identity and particulars of any responsible person appointed by him and shall furnish the designated officer with such particulars of such person as the officer may require and shall within seven days of any such change notify the designated officer of any change that may take place from time to time as to the identity of a responsible person or of his particulars.
- (3) The certificate holder shall ensure that the name of any responsible person appointed in terms of subsection (1) as well as his address and the telephone number or numbers at which he may be contacted are publicly displayed in the office or reception area of the premises at all times.
- (4) The certificate holder and any responsible person appointed to act in his absence shall take all reasonable steps to ensure that the provisions of these By-laws and any limitations, restrictions, terms and conditions imposed in terms of [section 3](#) (8) are complied with.

## 10. Certificate by occupants

Every adult person admitted to the premises for the purpose of occupying accommodation therein shall be required to sign a certificate to the effect that his attention has been drawn to the copy of these By-laws displayed in terms of [section 11](#) and in which he acknowledges that he may be required to leave the premises if he commits a breach of these By-laws or commits a nuisance.

## 11. Display of By-laws

The certificate holder shall publicly display an up-to-date copy of these By-laws in the office or reception area of the premises at all times and such By-laws shall be accessible to all occupants.

## 12. Right of entry and inspection

- (1) The designated officer and any other employee of the Council authorised by him shall at all reasonable and appropriate times be entitled to enter upon the premises for any of the following purposes, namely—
  - (a) to determine whether these By-laws and any other law is being complied with;
  - (b) to inspect the premises;
  - (c) to exercise and perform any power, duty or function vested in or imposed on him by these By-laws or any other law.
- (2) A person commits an offence if he prevents or attempts to prevent any person referred to in subsection (1) from entering the premises or from exercising his powers or performing his duties or functions or if he in any way hinders or interferes with such person in such exercise or performance.

## 13. Limits on occupancy

The maximum number of persons that may be accommodated in any room designated as a bedroom on the plan lodged in terms of [section 3](#) (1) as amended from time to time shall not exceed the maximum number of persons calculated on the basis of the floor space allocation prescribed in paragraph 1 of Schedule 3 to the Slums Act, 1979 ([Act 76 of 1979](#)).

## 14. Identification and marking of bedrooms

- (1) The certificate holder shall cause each room intended for use as a bedroom and reflected as such on the plan lodged in terms of [section 3](#) (1) as amended from time to time to be allocated a distinct number and he shall cause that number to be displayed on the external face of the door giving access to that room.
- (2) The certificate holder shall cause a notice to be displayed prominently on an internal wall of each room referred to in subsection (1), which notice shall reflect—
  - (a) the floor area of the room in square metres;
  - (b) the maximum number of persons who may be accommodated in that room as calculated in terms of [section 13](#);as shown on the plan lodged in terms of [section 3](#) (1) (b) as amended in terms of [section 8](#) (2).

## 15. Duties of certificate holder: Offences

- (1) The certificate holder shall—
  - (a) ensure that in the interests of public health and safety and to obviate the creation of nuisances all buildings comprising the premises are maintained in a clean, hygienic, safe and sound condition and comply with all laws;
  - (b) make adequate provision for cooking and food preparation facilities to the satisfaction of the City Medical Officer of Health of the Council for the persons accommodated on the premises if meals are not supplied to them and they are permitted by the certificate holder to cook or prepare food on the premises, which facilities shall be provided in a part of the building which is separate from the bedroom accommodation and which is depicted as set aside for that purpose on the plan lodged in terms of [section 3](#) (1) (b);



- (c) not cause, allow or permit cooking or preparation of food to take place in any bedroom or elsewhere than in the part of the building referred to in paragraph (b) above by means of a naked flame or cause or allow or permit any fire to be lit on the premises except in a stove or in any other device or installation designed for the purpose;
- (d) not use or cause, allow or permit to be used any device for heating or lighting which involves the use of gas or flammable liquid or substance referred to in [section 8](#) (4) other than a stove situated in the part of the premises referred to in paragraph (b) above, except with the prior written permission of the designated officer;
- (e) provide and maintain in good order ablution and toilet facilities and ensure a supply of water at all times, which facilities and supply are adequate in relation to the services available in the area;
- (f) if occupants to whom accommodation is supplied are furnished with bedsheets, pillows or towels, ensure that each such occupant is furnished with clean items which have been laundered since use by any other person;
- (g) equip each bedroom with adequate furniture and fittings, including sufficient beds and mattresses for the number of persons permitted to occupy such bedroom, as well as curtains or screens for each window which are of a width and density adequate to screen such window;
- (h) ensure that no person sleeps in any part of the premises other than a bedroom or occupies or uses any part of the premises for a purpose for which it was not designed;
- (i) not accommodate on the premises any persons in excess of the number for which it is designed and as calculated in accordance with these By-laws and shall not cause, allow or permit any person to occupy a bedroom so that the maximum number of persons that may be accommodated therein as determined in terms of [section 13](#) is exceeded;
- (j) ensure that while the premises are occupied the electricity and water supply and sewage disposal and plumbing installations and all equipment pertaining thereto are in good working order at all times;
- (k) ensure that no person occupies such premises unless—
  - (i) each room has a functioning lighting system and
  - (ii) every emergency route, passageway, entrance, stairway and lift has adequate lighting and is unobstructed;
- (l) provide and maintain in good order fire-fighting equipment in accordance with the requirements of the National Building Regulations and ensure that nothing is done to render any emergency route referred to in [section 3](#) (1) (b) (vi) inadequate or less effective;
- (m) ensure that waste and stormwater drains and gullies are kept clear and unblocked at all times;
- (n) keep all sanitary fittings, boilers, lighting and all other equipment and installations on the premises at all times in proper working order and ensure that they are functioning efficiently and do not give rise to a nuisance;
- (o) not allow the accumulation of refuse, rubble and litter on the premises in a manner or to an extent which could create a nuisance or a public health or safety hazard;
- (p) make adequate provision in compliance with the laws applicable thereto for the collection and temporary storage of refuse generated on the premises and take steps to ensure that refuse is not discarded or dumped elsewhere than in the refuse storage bins placed within the boundaries of the premises;

- (q) take adequate measures to prevent the breeding or harbouring of rodents, flies, vermin or mosquitoes;
  - (r) take adequate steps to prevent the commission by any person accommodated on the premises or any other person therein or thereon of any breach of these By-laws or of any nuisance;
  - (s) not cause, allow or permit a prostitute, whether male or female, to operate from the premises or to solicit therein;
  - (t) not cause, allow or permit any person indecently to expose herself or himself from anywhere on the premises; and any breach of this section shall constitute an offence for which the penalties referred to in [section 18](#) shall be applicable.
- (2) For the purposes of subsection (1) the expression “certificate holder” shall include any person who is in actual control of the premises or is managing the business on behalf of the certificate holder at the time that a contravention of subsection (1) takes place.

## 16. General offences

A person commits an offence if he—

- (a) commits any act which constitutes a nuisance whilst on the premises, or, being an occupant of the premises, in any public place adjoining the premises;
- (b) whilst on the premises indecently exposes his person to the public view or in any of the common parts of the premises;
- (c) cooks or heats food in a bedroom or in any part of the premises other than a part designed for the purpose and set aside in terms of [section 15](#) (b) or heats any liquid in a bedroom by means of a device which involves a naked flame;
- (d) lights a fire on the premises otherwise than in a stove or other device or installation designed for the purpose;
- (e) sleeps in any part of the premises other than a bedroom assigned to him for that purpose or occupies or uses any part of the premises for a purpose other than that for which it was designed;
- (f) throws or discards any object onto adjoining property or urinates in view of the public or a public place;
- (g) creates any disturbance of the peace on the premises;
- (h) refuses to leave the premises when lawfully required to do so in terms of the certificate referred to in [section 10](#).

## 17. Presumptions

For the purposes of these By-laws—

- (a) a person shall be held to have caused, allowed or permitted an act to be performed, an event to happen or a situation to arise if he fails to take reasonable steps to prevent it; and
- (b) where a responsible person has by act or omission committed an offence under these By-laws the certificate holder shall, notwithstanding proof to the effect that he gave instructions to the manager or responsible person, as the case may be, aimed at preventing the commission of the offence, also be guilty of that offence unless he proves to the satisfaction of the court that he took all reasonable steps to prevent its commission.

## 18. Offences and penalties

- (1) Any person who—
  - (a) contravenes any provision of these By-laws or commits any offence thereunder; or
  - (b) contravenes any limitations, restrictions, terms and conditions imposed upon the granting of any application, approval, authority, concession, consent, relaxation or permit in terms of these By-laws; or
  - (c) fails to comply with the terms of any notice served upon him in terms of these By-laws;

shall be guilty of an offence for which the penalties provided for by section 266 (7) (a) of the Ordinance are hereby prescribed.

- (2) Breach of [section 2](#) (1) and failure to comply with the terms of any limitation, restriction, term, condition or notice referred to in subsection (1) (b) or (c) above shall constitute a separate offence committed on each day during which such contravention or failure continues for which a separate penalty may be imposed in respect of each such offence.
- (3) A court may when convicting and sentencing a certificate holder or a responsible person for an offence under these By-laws in the circumstances described in [section 7](#) (1) order that the registration of the business in terms of [section 3](#) in respect of the accommodation establishment in relation to which the offence was committed be cancelled, whereupon the certificate issued in terms of [section 3](#) (6) shall automatically cease to be valid.