

CHILDMINDER SERVICE BY-LAWS

[PROVINCIAL NOTICE NO. 94 OF 1991.]
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CITY OF DURBAN

CHILDMINDER SERVICE BY-LAWS

The City Council of the City of Durban, acting under the authority of Section 268 of the Local Authorities Ordinance No. 25 of 1974, has at its meeting held on 7 December 1990 adopted the following By-laws—

ARRANGEMENT OF SECTIONS

1.	Definitions
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3.	Registration of childminder services
4.	Validity of registration
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1. Definitions.—In these By-laws, unless the context indicates otherwise—

“**approved**” means approved by the authorised officer;

“**authorised officer**” means an officer of the Council to whom it has delegated a duty, function or power under these By-laws in relation to the exercise or performance of that duty, function or power;

“**child**” means a child admitted to a childminder service;

“**Council**” means the City Council of the City of Durban;

“**childminder service**” means any undertaking involving the custody and care of a maximum of six children apart from their parents during the whole or part of the day on all or any days of the week;

“**certificate**” means a certificate issued in terms of section 3;

“**certificate holder**” means a person to whom a certificate has been issued in terms of section 3;

“**communicable disease**” means a communicable disease as defined by section 1 of the Health Act, 1977 (Act 63 of 1977);

“**National Building Regulations**” means the regulations published under the National Building Regulations and Building Standards Act 1977 (Act 105 of 1977);

“**premises**” means any building or part thereof including outdoor play areas in or upon which a childminder service is carried on;

“**Ordinance**” means the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974);

“**prescribed**” means prescribed by the authorised officer referred to in sections.

1A. Non-discrimination.—(1) Subject to the provision of subsection (2) hereof, no provision of these By-laws shall be applied so as to discriminate between persons on the grounds of race, religion or gender nor shall it be so construed as to have the effect of authorising such discrimination.

(2) Notwithstanding the provisions of subsection (1) hereof, discrimination on the grounds of gender may expressly be authorised in terms of any provision of these By-laws which prescribes the wearing of appropriate apparel in a public place or imposes a restriction upon the entry of persons into public ablution, toilet and change room facilities or prescribes different standards for such facilities.

[R. 1A inserted by MN 43 of 1992.]

2. Application of By-laws.—(1) These By-laws shall apply to all childminder services within the City of Durban.

(2) Subject to the provisions of subsection (3), no person shall conduct a childminder service unless it has been registered in terms of section 3 and he is in possession of a valid certificate issued in terms of that section.

(3) A person who is at the date of commencement of these By-laws conducting a childminder service shall within one month of that date, or within such extended period as the Council may on application made prior to the expiry of the said period in writing allow, apply for registration of such service 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 service after such period or after refusal of his application be deemed to have contravened subsection (2).

(4) A person whose service has been registered in terms of section 3 shall in the conduct of his service ensure that it and the premises in which it is conducted complies with all the requirements of these By-laws and he shall comply with the conditions and restrictions imposed upon the registration of the service and if he fails to do so he shall be guilty of an offence for which the penalties referred to in section 13 shall be applicable.

3. Registration of childminder services.—(1) Every person who intends to conduct a childminder service shall apply in writing on the prescribed form to the authorised officer for registration of that service and shall supply such information and plans as that officer may require.

(2) The authorised officer shall approve an application and register the service in respect of which It has been made in terms of subsection (1) if he is satisfied—

(a) that the applicant is not an unsuitable person to conduct a childminder service and that there are no circumstances which are likely to be prejudicial to the health, safety and welfare of children who may be cared for by the service; and

(b) that the requirements of section 6 and 7 have been complied with,

and shall refuse the application if he is not so satisfied, provided that he may afford an applicant an opportunity of effecting compliance with the requirements of sections 6 and 7 within a prescribed period.

(3) In granting an application for registration the authorised officer may impose such conditions and restrictions as he deems fit in order to ensure that the requirements of these By-laws are satisfied and the health and safety of the children are maintained.

(4) Upon approval and registration in terms of subsection (2) the authorised officer shall issue a certificate to the applicant which shall contain a description of the premises in respect of which the registration has been effected and any conditions or restrictions imposed in terms of subsection (3), including restrictions as to the number and ages of the children who may be cared for by the service.

4. Validity of registration.—(1) Subject to the provisions of subsection (2) and of section 5, registration and the certificate issued in respect thereof shall be valid for an indefinite period but shall be valid only in respect of the premises referred to in section 3 (4).

(2) If a certificate holder wishes to transfer his service to other premises or if the premises referred to in section 3 (4) are or are to be materially altered so that they no longer comply with the requirements of section 6, the certificate holder shall apply to the authorised officer on the prescribed form for the registration of his service to be amended accordingly and the provisions of subsections (2), (3) and (4) of section 3 shall *mutatis mutandis* apply.

(3) Registration shall lapse and the registration certificate issued to the certificate holder shall cease to be valid—

- (a) upon his death;
- (b) if he ceases to conduct his service;

and neither registration nor the registration certificate shall be transferable to any other person, heir or successor in title to the certificate holder.

(4) A certificate holder shall notify the authorised officer in writing if he suspends his service or ceases to conduct it.

5. Cancellation of registration.—(1) The authorised officer may by written notice to the certificate holder cancel registration of a childminder service if—

- (a) the certificate holder is convicted of an offence under these By-laws or pays an admission of guilt in respect of any such offence;
- (b) the certificate holder fails to comply with any condition or restriction imposed in terms of section 3 (3); or
- (c) the authorised officer is of the opinion that the certificate holder is an unsuitable person to conduct a childminder service, or that circumstances exist that are likely to be prejudicial to the health, safety and welfare of children being cared for by the service.

(2) Upon cancellation of registration in terms of sub-section (1) the registration certificate shall cease to be valid; providing that before cancelling registration the authorised officer may at his sole discretion suspend registration to give the certificate holder an opportunity of remedying a defect in the premises or rectifying an omission and if the certificate holder does so to his satisfaction the authorised officer may elect not to cancel the registration; during the period of such suspension the certificate holder shall not conduct his childminder service.

6. Requirements for premises.—The certificate holder shall ensure that the premises comply with the National Building Regulations and that the following minimum accommodation and facilities are provided in respect of the childminder service at all times that such service is being conducted—

- (a) An adequate, suitable and unobstructed indoor floor area approved by the authorised officer and reserved for the use of the children.

- (b) An approved floor covering to the floor area provided in terms of paragraph (a) above if required by the authorised officer.
- (c) An approved kitchen on the premises for the preparation of meals.
- (d) Approved storage facilities for the personal belongings of each child.
- (e) A towel and face cloth of an approved material for each child which shall be kept or hung separately.
- (f) An adequate supply of toilet paper, tissues and soap which shall be available and accessible to the children.
- (g) Suitable and adequate toilet and wash facilities for children who are not toilet trained.
- (h) When necessary, an approved area and surface for napkin changing with ready access to a suitable wash hand facility neither of which forms part of or has direct access to a kitchen.
- (i) A plastic bucket for each child with a close-fitting lid or other approved means for the storage of soiled napkins, such buckets to be marked to ensure individual use and to be stored in the bathroom or other approved area which is inaccessible to any child.
- (j) Separate storage for clean napkins.
- (k) An approved and adequate outdoor play area, comprising lawns or other safe surfaces which is adequately fenced and has approved lockable or child-proof gates; provided that if such an area cannot be provided the authorised officer may, at his sole discretion, approve of the substitution of an indoor area additional to that provided in terms of paragraph (a) above.

7. Equipment for children.—The certificate holder shall provide equipment for the children complying with the following requirements—

- (a) approved individual resting or sleeping equipment for each child, marked with the child's name;
- (b) approved and sufficient crockery and cutlery for the sole use of the children and kept in a clean and good condition at all times;
- (c) adequate supply of play equipment.

8. Medical care of children.—The certificate holder shall—

- (a) observe all children for any signs of illness, indisposition, injury or other abnormal condition, including possible child abuse;
- (b) immediately notify the parent or guardian of such illness, indisposition, injury or other abnormal condition;
- (c) if necessary and subject to the prior consent of the parent or guardian, summon the private medical practitioner of any child suffering or suspected to be suffering from illness or injury or in the event of the unavailability of such medical practitioner summon a medical practitioner of the certificate holder's choice;
- (d) immediately isolate the child so suffering and devote all care necessary to the comfort and treatment of the child whilst on the premises;
- (e) in the event of a communicable disease or detection of signs of possible child-abuse, notify the authorised officer immediately;
- (f) keep a record of all injuries and illnesses which occurred or manifested themselves whilst the child was on the premises and keep records of

injuries observed on the child which have occurred other than at the premises;

- (g) ensure that all children admitted to the childminder service have completed basic immunisation schedules considered necessary by the authorised officer vested with the powers and functions referred to in section 3; provided that if any child is too young such immunisation shall be carried out and completed as soon as the child is old enough.

9. Health and safety measures.—(1) The certificate holder shall, in the interests of the health and safety of the children—

- (a) take effective precautions for the protection of the children against fires, hot water installations, electrical fittings and appliances and any other article, condition or thing which may be dangerous or likely to cause injury to any child;
- (b) not accept for admission to the childminder service or retain in such service any child under the age of five years if there is a swimming or paddling pool on the premises or within the curtilage of the site on which the premises are situated; provided that:
 - (i) the provisions of this paragraph shall not apply to a person referred to in section 2 (3) in respect of the premises described in the certificate issued to him in terms of section 3 (4) for as long as that certificate remains valid and he complies with conditions imposed by the authorised officer in terms of section 3 (3) as to security measures to be taken in relation to the pool on those premises to prevent danger to children;
 - (ii) where the authorised officer is of the opinion that having regard to the particular circumstances of any application for registration, the operation of paragraph (b) would be so unreasonable as to cause substantial prejudice of a nature that was never intended by the said By-law in that the children being cared for are not exposed to any danger by the presence of a swimming or paddling pool on the premises by virtue of its siting or inaccessibility he may in writing relax the requirements of paragraph (b).

[Para. (b) substituted by MN 16 of 1994.]

- (c) ensure that all gates or doors of outdoor play areas are close-fitting and securely locked or otherwise closed so as to prevent children from entering or leaving the confines of such areas or the premises of their own accord and to prevent the entrance or presence of domestic animals, including dogs.
- (d) equip and maintain a first-aid cupboard with first-aid materials and equipment to the satisfaction of the authorised officer and keep it readily available for use and out of reach of the children;
- (e) store medicines, corrosive and other harmful substances, including alcoholic beverages, in a safe manner and in a place not accessible to the children;
- (f) ensure that no noxious or poisonous plant or shrub grows on the premises;
- (g) arrange for the medical examination of employees and other persons involved in the conduct of the childminder service or present on the premises when called upon by the authorised officer to do so and shall not allow any such person who is found to be suffering from or to be a carrier of a communicable disease to remain on the premises.

(2) The provisions of the Regulations relating to Communicable Diseases and the Notification of Notifiable Medical Conditions published under Government Notice R.2438 dated 30 October 1987 shall *mutatis mutandis* apply to the premises of childminder services as if they fell within the scope of the expression “teaching institution” in Regulation 1 of those Regulations and—

- (a) a breach by a certificate holder of a duty placed upon a principal in terms of those Regulations shall be deemed to be a breach of these By-laws;
- (b) the duties placed upon and the powers vested in a medical officer of health under those regulations shall be placed upon or vest in the authorised officer to whom the powers and functions referred to in section 3 have been delegated for the purposes of these By-laws.

10. Management responsibilities.—The certificate holder shall ensure that—

- (a) no refuse receptacle or any other potentially harmful or hazardous thing or material is stored in the outdoor play area used by the children;
- (b) the buckets used for the solid napkins are kept in a clean and sanitary condition at all times and cleaned regularly with an approved disinfectant;
- (c) chamber pots are emptied, cleaned and disinfected with an approved disinfectant immediately after being used and that they are stored in a suitable place when not in use and are kept in good repair;
- (d) the children are at all times under adult supervision;
- (e) each child uses his own sleeping equipment and his own towel and face cloth;
- (f) meals are provided to the children which meet with the requirements of the authorised officer and that records of menus of all meals are kept and are available for inspection at all times, such menus to be approved by the authorised officer.
- (g) prepared infant feeds are supplied by parents or guardians in bottles with covered teats;
- (h) access to a telephone is available;
- (i) the premises are maintained in a clean, hygienic, safe, sound and pest-and-rodent-free condition.

11. Health register.—The certificate holder shall maintain a health register reflecting the following details of all children admitted to the childminder service—

- (a) The child’s name and date of birth.
- (b) The name of the parents or guardian and their address and telephone number, both at home and at place of employment.
- (c) The name and address and telephone number of each child’s medical practitioner who may be consulted in emergencies with written authority given by the parents or guardian to send for him.
- (d) Information concerning the child’s general state of health and physical condition.
- (e) Details of operations which each child has undergone and of any illnesses or communicable diseases which the child has suffered and the relevant dates.
- (f) Details of immunisation.
- (g) Details of allergies and any medical treatment which each child may be undergoing.

12. Right of entry and inspection of premises and records.—An authorised officer may for any purpose connected with the carrying out of these By-laws, at all reasonable times and without previous notice, enter any premises upon which a childminder service is conducted, or upon which such officer has reasonable grounds for suspecting the existence of such childminder service and make such examination, enquiry and inspection thereon as he may deem necessary.

13. Offences and penalties.—(1) Any person who fails to give, or refuses access to any authorised officer, if he requests entrance to such premises, or who obstructs or hinders such officer in the execution of his duties in terms of these By-laws or who fails or refuses to give information or to produce records that he may lawfully be required to give or produce to such officer, or who gives to such officer false or misleading information knowing it to be false or misleading, shall be guilty of an offence.

(2) Any person who contravenes any provision of these By-laws or contravenes any conditions or restrictions imposed upon the granting of an application in terms of section 3 shall be guilty of an offence for which the penalties provided for by section 266 (7) (a) of the Ordinance are hereby prescribed.

14. Presumptions.—(1) If in any prosecution under these By-laws it is alleged that the owner, lessee or occupier of premises conducted a childminder service at those premises, he shall be deemed to have conducted a childminder service at such premises unless the contrary is proved.

(2) When an employee of a certificate holder performs any act or is guilty of any omission which if that employee had been the certificate holder would have constituted an offence under these By-laws, the certificate holder shall be deemed to have performed the act or to be guilty of the omission himself and he shall be liable on conviction to the penalties mentioned in section 13 (2) unless he proves to the satisfaction of the Court that—

- (a) in performing the act or being guilty of the omission the employee was acting without his knowledge or permission;
- (b) all reasonable steps were taken by him to prevent the act or omission in question; and
- (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.

(3) The fact that a certificate holder issued instructions forbidding any act or omission referred to in subsection (2) shall not of itself be accepted as sufficient proof that he took all steps referred to in paragraph (b) of that subsection.

(4) In any prosecution of a certificate holder for an offence under these By-laws, the accused shall be deemed to know the provisions of these By-laws and that the offence with which he is charged is an offence thereunder.
