

**ETHEKWINI MUNICIPALITY: RETAIL MARKET BY-LAW, 2013**



Adopted by Council on the:

Promulgated on:

**RETAIL MARKET BY-LAW, 2013**

**To provide for the control and regulation of the Retail Markets which are owned or controlled by the Municipality; for the repeal of laws and savings; and for matters incidental thereto.**

**PREAMBLE**

**WHEREAS** there is a need for the Municipality to regulate and manage the operation of the Farmers' Retail Markets that are owned or controlled by the Municipality;

**WHEREAS** the Municipality has competence in terms of the 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;

**AND WHEREAS** it is necessary for the Municipality to maintain the standard and quality of goods sold at its markets;

**NOW THEREFORE** the Municipal Council of the eThekweni Metropolitan Municipality, acting in terms of section 156 read with 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 INTERPRETATION AND APPLICATION**

### **Definitions**

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

“**allocations policy**” means the policy adopted by the Municipality to regulate the allocation of stalls in the retail market;

"**article**" means any fresh produce, goods or thing which is approved by the Head to be brought onto the market for sale;

**"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); and
- (b) municipal or metropolitan Police Officers as contemplated in the South African Police Services Act, 1995 (Act No. 68 of 1995);

**"buyer"** means any person entering the precincts of the market for the purpose of buying fresh produce or any article offered for sale on the market or any person with whom a market agent has concluded a direct sale on behalf of a supplier;

**"Chief Financial Officer"** means a person employed by the Municipality in terms of section 57 of the Systems Act as its Chief Financial Officer, and includes any person to whom the Chief Financial Officer has delegated or sub-delegated a power, function or duty in accordance with the system of delegations developed by the Municipal Manager in terms of section 59 of the Municipal Systems Act 32 of 2000;

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

**"farmer"** means any person authorised in writing by the Head to sell or expose for sale, within the retail market, any agricultural products produced by such person;

**"farmer's table"** means any space demarcated and allotted by the Head to a farmer in the Farmers' section of the market for the purpose of selling authorised goods therefrom;

**"fresh produce"** means any kind of grown agricultural product authorised by the Head for sale in the market;

**"Head"** means the Head of the markets, and includes any person–

- (a) acting in that position; or

(b) to whom the Head has delegated or sub-delegated a power, function or duty in accordance with the system of delegation developed by the Municipal Manager in terms of section 59 of the Municipal Systems Act 32 of 2000;

**“manufacturer”** means any person who sells or exposes for sale within the market, baskets or such articles manufactured by himself, as the Head may authorise;

**"market"** means any Retail Market which is owned or controlled by the Municipality, including any land, building or premises on or in which the business of the market is conducted;

**"Municipal Finance Management Act"** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

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

**“Municipality"** means eThekweni Municipality, a category A municipality as envisaged in terms of section 155(1) of the Constitution of South Africa and established in terms of PN343 of 2000 (KwaZulu- Natal);

**“municipal manager”** means a person appointed in terms of section 54A of the Municipal Systems Act as the head of administration of the municipal council;

**"person"** means a natural person or juristic person;

**"permit"** means an official document issued by the Head authorising a person to sell or expose for sale upon or within the market any article which is authorised by the Head for sale in the market;

**"Policy"** means the Policy adopted by the Municipality in terms of this By-law for the management and control of the markets;

**“produce entry document”** means a document issued to a farmer by the Head prior to the entry of the farmer into the market which shall contain such information as the Head from time to time may determine;

**"refuse container bay"** means an area for the placing of refuse containers, whether a demarcated or a designated refuse container bay;

**“seller”** means a farmer or manufacturer as defined in this section;

**"stall"** means any space demarcated and allotted by the Head to a trader in the traders' section of the market for the purpose of selling such articles as the Head may permit to be sold in terms of this By-law;

**"stall holder"** means the holder of –

- (a) a valid permit issued by the Head permitting a person to occupy a stand in the traders' section of the market; and
- (b) a trading licence for the sale of goods so permitted;

**"table holder"** means a *bona fide* farmer authorised to occupy a table in terms of this By-law; and

**"tariff of charges"** means the tariff of charges, fees, etc, payable to the Municipality in respect of articles sold or services rendered at the market, as fixed in terms of the Municipality's Tariffs By-law and any applicable policy;

**"trader"** means any person who sells or exposes for sale within the traders' section he market any produce which has not been grown by such person;

**"Systems Act"** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**Interpretation of By-law**

2. If there is a conflict of interpretation between the English version and the translated version thereof, the English version prevails.

**Objects of By-law**

3. The objects of this By-law are to—

- (a) ensure effective management of the markets under the ownership and control of the Municipality;
- (b) regulate proper conduct of persons within the precincts of the markets; and
- (c) provide for matters incidental thereto.

**Application of By-law**

4. This By-law applies to all the Retail Markets under the ownership and control of the Municipality, irrespective of the area in which they are located.

## CHAPTER 2 MANAGEMENT AND CONTROL

**Management authority**

5. The Head, duly represented by an authorised official, is responsible for the management and control of the business of the markets.

**Vehicular traffic**

6.(1) The Head is empowered to control and regulate the volume and movement of traffic entering and within the precincts of the market, including the –

- (a) demarcation of parking bays and the allocation thereof;
- (b) determination and levying of tariff charges for the use of parking bays; and



(c) charging of fines for non-compliance with the traffic signage and rules within the precincts of the market, as well as the recovery thereof.

(2) For the purposes of this section, the registered owner of any vehicle is presumed to be the driver of such vehicle until the contrary is proved.

(3) Any vehicle which is used in contravention of the traffic signage and rules applicable within the market may be impounded by the Municipality: Provided that reasonable steps must be taken by the Municipality to bring to the attention of road users within the market the relevant traffic signage and rules and, where practicable, the penalties for the contravention thereof.

(4) A vehicle impounded by the Municipality in terms of subsection (1) may be held by the Municipality until a fine in the amount determined by the Head is paid in full to secure the release thereof, together with an additional amount for storage if the vehicle concerned is not claimed within 12 hours.

### **CHAPTER 3 TRADING AND RELATED ACTIVITIES**

#### **Poultry and birds**

7.(1) All live poultry or birds brought upon the market for sale must—

- (a) be in healthy condition and free from disease;
- (b) be well exposed in crates or boxes;
- (c) be well open to public view; and
- (d) not be tied by the legs.

(2) The market agent must ensure that such poultry and birds are fed and given water in such a manner and at such times as may be determined by the Head.

(3) The sale of poultry and birds on the market must be conducted in a manner determined by the Head.

(4) After sales, poultry and birds must not be left in the crates or boxes for longer than it is necessary for the delivery to be made to the buyer: Provided that the Head may instruct a market agent to remove the poultry or birds as soon as they have been sold: Provided further that the Head may refuse to release poultry or birds if he or she has reason to believe that they are unhealthy, or if the buyer has failed to comply with any condition of sale imposed by the Head.

(5) It is prohibited for any person to slaughter, destroy, pluck or clean poultry or birds on the premises of the market.

(6) The Head may take all such steps as he or she may deem advisable to prevent or to stop the infliction of suffering, cruelty or rough handling on any poultry or birds.

#### **Stallholder's permit**

8. (1) A person desirous of occupying a stall in the market must—

- (a) make an application to the Head on a prescribed form for the occupation of such stall; and
- (b) obtain a permit issued by the Head authorising such person to occupy an allotted stall and conduct business therein on such terms and conditions as may be determined by the Head.

(2) The issuing of a stallholder's permit in terms of subsection (1) is at the sole discretion of the Head, subject to the availability of stalls and the suitability of the applicant as determined by the Head.

(3) Subject to due compliance with the applicable provisions of the Constitution and the rules of natural justice, the Head is empowered, at any time, to withdraw a stallholder's permit issued to any person who is found guilty of committing an offence in terms of this By-law or any other law relevant to such person's business at the market.

#### **Fees and charges**

9.(1) A stallholder's permit may not be issued by the Head in terms of section 8 unless the Applicant has paid the prescribed fee in advance and obtained a receipt for such payment entitling such applicant to occupation of the stall designated thereon.

(2) The person to whom a receipt is issued must retain it for the period of its validity and must, when required to do so during that period, produce such receipt for the purpose of inspection by the Head or any person appointed by the Head for that purpose.

### **Default in payment of stall fees**

10.(1) In the event of failure by a stall holder to make payment of a fee referred to in subsection 9(1) for the occupation of a stall on or before the stipulated date, the right of the stall holder concerned to occupy such stall may be terminated in writing by the Head on three days' written notice to the stall holder to vacate the relevant stall within a period stipulated in such notice.

(2) Any failure or refusal by a stall holder to obey a notice issued by the Head in terms of subsection (1) constitutes a further contravention of this By-law entitling the Head to eject without further notice the stallholder concerned from the relevant stall.

### **Allocation of stalls**

11. Notwithstanding anything to the contrary contained in this By-law, the allocations of stalls at the market must be carried out by the Head in accordance with the Allocations Policy.

### **Responsibilities of traders or stallholders**

12.(1) A stallholder must—

(a) conduct business within the confines of the stall allotted to such stallholder by the Head in terms of this By-law;

(b) ensure that any poultry sold in the market is sold from a crate or pen approved by the Head containing suitable drinking vessel with a sufficient supply of clean water: Provided that the number of birds permitted to be accommodated in a cubicle must be determined by the Head;

(c) sell all articles by private treaty; and

(d) keep clean and tidy to the satisfaction of the Head any vehicle, basket or other receptacle brought in the market for the conveyance of goods for sale at the market;

**Entrance and exit to retail market**

13. All articles which are brought into the market for sale must be brought in through the gate set aside by the Head for such purpose.

**Closing hour**

14.(1) At the closing hour a warning bell must be rung, after which no further sales must take place in the market and all traders and stallholders must forthwith remove all goods from the market. Stallholders may, at the discretion of the Head and at their own risk, leave unsold good on their allotted stalls.

(2) A member of the public may not enter the market after the closing hour. Any member of the public who is in the market at the closing hour must leave the market within 30 minutes after the closing hour.

**Posting of notices**

15. The Head may post any notice relating to any matter affecting the market upon a notice board in a prominent position within the market and such posting is deemed to be sufficient notice of any such matter to any person to whom any such notice is addressed.

**CHAPTER 4  
POLICING CONDUCT AND LIMITATION OF LIABILITY**

**Personal attendance and supervision**

16.(1) A stallholder must –

(a) be in personal attendance at his or her stall;

- (b) personally supervise the business carried on at his or her stall unless he or she has first obtained written permission of the Head to allow some other person to supervise and carry on the said business on his or her behalf; and
- (c) at all times keep his or her stall clean and tidy to the satisfaction of the Head.

### **Vicarious Liability**

17.(1) A trader or stallholder is responsible for the conduct in the market of any person employed by such trader or stallholder or whom the trader or stallholder concerned permits or allows to assist in carrying on the business of such trader or stallholder, and must ensure that any such person complies with the provisions of this By-law.

(2) Any reference in this By-law to a trader or stallholder is deemed *mutatis mutandis* to include any person employed by or rendering assistance to a trader or stallholder.

### **Inspection of articles**

18. (1) The Head may inspect or cause to be inspected any fresh produce or food exposed for sale on the market in order to ascertain whether it is healthy and free from disease, infection or contamination and may, if any fresh produce is found to be unhealthy, diseased, infected or contaminated, take or cause to be taken such steps as the Head may deem appropriate, including the seizure, condemnation or destruction of the fresh produce concerned.

(2) Any fresh produce which is required by law to be graded may not be offered for sale or sold on the market unless—

- (a) it has been submitted by the market agent concerned for inspection and has been inspected as prescribed by law; and
- (b) the grade assigned to it is as a result of such inspection has been clearly marked on it by such market agent or inspector.

(3) Any fresh produce which is required by law to be offered for sale or sold by mass, or to be packed, marked or graded in a prescribed manner, may not be offered for sale or sold or removed from the market unless it complies in every respect with the requirements of such law:

Provided that the Head may, in his or her discretion, direct that any such fresh produce be sold if he or she deems it expedient to do so.

### **Municipality not responsible for loss**

19. Neither the Head nor the Municipality is liable for any loss or damage caused by fire, flood, theft or from any other cause whatsoever, of any article or property brought onto the market by any person.

### **Prohibited conduct**

20.(1) A person entering the market must at all time act in strict compliance with this By-law, as well as such lawful instructions and orders as may be issued or given by the Head from time to time for the proper management and control of the market.

(2) Subject to subsection (1), a person may not commit, in or about the market, any act which disrupts, or is, in the opinion of the Head, likely to disrupt the normal business of the market, including the following:

- (a) causing a nuisance, or behaving in a manner which is disorderly or unseemly, or use of threatening, obscene, abusive, violent, offensive or disgusting language;
- (b) touting for customers;
- (c) interfering with or obstructing any employee of the market in the execution of his duties;
- (d) organising or conducting a meeting without obtaining the prior written consent of the Head;
- (e) touching, tasting, smelling, handling or removing any fresh produce exposed for sale in such a way as to expose it to contamination;
- (f) keeping or exposing for sale any article or item of an offensive nature;
- (g) smoking in any part where a notice prohibiting smoking is displayed;
- (h) lighting a fire, save at such times and in such places as have been authorised by the Head;
- (i) standing, sitting, laying upon or leaning against any article or container;

(j) without lawful reason tampering with or removing or causing to be removed any produce placed or exposed for sale, or any container, or any label on such fresh produce or container;

(k) causing or permitting any solids or other matter likely to cause blockage in or damage to drains to enter any drain or gully, or causing to permit any sewage, oil, foul water or other objectionable substance to enter any stormwater drain;

(l) without the permission of the Head, washing, packing, sorting, grading, or cleaning any fresh produce in an area not designed for that purpose;

(m) throwing or depositing in any place other than receptacles provided for that purpose, any fruit, peel or any other vegetable matter or refuse;

(n) bringing any intoxicating substance onto the market or entering or remaining upon the market while under the influence of intoxicating substance;

(o) damaging, ruining or tampering with any article brought onto the market, or any building or property within the market which belongs to the Municipality; and

(p) bringing onto the market any refuse, garbage or vegetable matter for the purpose of discarding such refuse, garbage or vegetable matter within the precinct of the market.

3.(1) A person may not, without the prior written approval of the Head,—

(a) occupy a stall in the market other than the table allotted to such person by the Head;

(b) bring or cause to be brought onto the market any animal which is not for sale;

(c) bring or cause to be brought onto the Early Morning Market, or sell or expose or offer for sale or cause or permit to be sold or exposed or offered for sale at that market, any agricultural produce which was not bought by such person either from a farmer in terms of this By-law or within the confines of the Early Morning Market: Provided that where this is with the prior written approval of the Head, it will be subject to payment by the person concerned of a surcharge of 5% upon the value of such produce as assessed by the Head; and

(d) bring or cause to be brought onto the market or sell or expose or offer for sale or cause or permit to be sold or exposed or offered for sale any agricultural produce or articles other than those varieties thereof as have been determined by the Head from time to time, and otherwise than in compliance with such restrictions as to quantity or mass as the Head may from time to time specify.

(4) The Head, or an authorised official, is entitled to remove from the market any person who is in a state of intoxication or who behaves in a manner which is disorderly or unseemly or who causes a nuisance within the precincts of the market.

(5) A person removed from the market in terms of subsection (3) must not re-enter any part of the market on the same day on which such person was so removed.

(6) Notwithstanding subsections (3) and (4), the Head is empowered to exclude any person referred to in subsection (3) from the market for any period not exceeding 14 days.

(7) The Head or an authorized official is empowered to arrest without a warrant any person found committing any offence within the precincts of the market or any person whom the Head or a police officer believes, on reasonable grounds, to have committed a serious offence in terms of this By-law or any other law.

## **CHAPTER 5**

### **MISCELLANEOUS**

#### **Delegations**

- 21.(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 subsection (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), subject to the criteria set out in section 50(2) of the 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.

### **Appeals**

**22.**(1) A person whose rights are affected by a decision taken by the Head or an authorised official in terms of this by-law may appeal against that decision in terms of the Appeals provision contained in the Systems Act by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.

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

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

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

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

(6) All appeals lodged are done so in terms of the Systems Act, and not in terms of this By-law.

### **Offences and penalties**

**23.**(1) A person is guilty of an offence if such person—

- (a) contravenes any provision of this By-law;
- (b) contravenes any condition imposed upon the granting of any application, consent, approval permit or authority in terms of this By-law; or
- (c) fails to comply with an order or terms of any notice served upon such person in terms of this By-law.

(2) A person who is convicted of an offence under this section may be sentenced to a fine or imprisonment for a period not exceeding two years, or to both a fine and a period of imprisonment.

(3) Notwithstanding the provisions of subsection (2), and subject to the rules of natural justice and the Constitution, the Head may conduct an informal inquiry into an alleged breach of any provision of this By-law by any person which, in the opinion of the Head, is not serious enough to warrant prosecution in terms of subsection (2).

(4) If sufficient evidence is adduced to the satisfaction of the Head that the person referred to in subsection (3) has committed an alleged breach of this By-law, the Head may summarily find such person guilty of committing the alleged breach without a formal hearing being held, and impose upon him or her such penalty as he or she may deem appropriate, subject to the right of the person concerned to appeal against the Head's finding or penalty in terms of this By-law.

### **Repeal of laws and savings**

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

(2) Any rights accrued or obligations incurred under the repealed by-laws remain in force as if those by-laws have not been repealed.

**Short title and commencement**

25. This By-law is called the Retail Market By-law 2013, and takes effect on the date of the publication thereof in the provincial Gazette or as otherwise indicated in the notice thereof.

**SCHEDULE  
LAWS REPEALED**

| <b><i>Number and year of law</i></b>  | <b><i>Title</i></b>   | <b><i>Extent of repeal</i></b> |
|---|---|--------------------------------|
| Provincial Notice No. 42 of 1972 published in Provincial Gazette No. 3658 dated 20 January 1972 | Indian Market Bylaw (Early Morning Section)   | The whole                      |
| Provincial Notice No. 298 of 1959 published in Provincial Gazette dated 2 July 1959             | Standard Bylaws (Pinetown)  | Chapter 7                      |
| Provincial Notice No. 287 of 1963 published in Provincial Gazette No. 3164 dated 30 July 1963   | General Bylaws Chapter xiv (Verulam)  | The Whole                      |
| Provincial Notice No. 87 of 1953 published in Provincial Gazette No. 2461 dated 10 March 1953   | Standard Bylaws (Mount Edgecombe)   | Chapter 7                      |
| Provincial Notice No. 237 of 1942   | Regulations for the purpose of local health commission (Public Health Areas Control) Ordinance No. 20 of 1942 | The Whole                      |