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eThekwini Municipality: Child Care Facilities By-law 2015

Assented to on 24 June 2015

Commences on 22 April 2016 unless otherwise noted

To require the operators of child care facilities to be certified; to set out requirements for the premises on which child care facilities are operated; to regulate certain services provided at child care facilities; to provide for the safety and medical care of children in child care facilities; to impose record keeping and other administrative requirements on operators; to prohibit certain conduct; to create offences and penalties; to provide for the withdrawal of compliance certificate; to provide for the repeal of laws and savings; and to provide for matters incidental thereto.

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 in terms of section 152(d) of the Constitution, one of the objects of the eThekwini municipal council is the promotion of a safe and healthy environment;

WHEREAS there is a need to regulate child care facilities within the area of jurisdiction of the eThekwini Municipality in order to ensure the well-being and safety of children;

WHEREAS the eThekwini municipal council has the competence in terms of Part B of Schedule 4 of the Constitution to control child care facilities;

AND WHEREAS the eThekwini municipal council 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;

NOW THEREFORE the eThekwini municipal council, acting in terms of section 156 read with Part B of Schedule 4 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:

Chapter 1 Interpretation

1. Definitions

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

"Act" means Children's Act No. 38 of 2005, including the regulations made under that Act;

"adequate" means that which is adequate in the reasonable opinion of the Municipality after

having regard to applicable law and guidelines;

"approved" means that which has been approved by the Municipality, after having regard to the reasonable environmental health requirements that may apply in the circumstances;

"approved premises" means any premises that have been approved for the operation of a child care facility and in respect of which a health compliance certificate has been issued;

"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;

"certificate of acceptability" means a certificate of acceptability issued by the Municipality in terms of the Regulations Governing General Hygiene Requirements For Food Premises and the Transport of Food made in terms of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) and published by Government Notice R962 of 23 November 2012;

"child" means any person under the age of 18 years and "children" has a corresponding meaning;

"child care facility" means any premises at which children are provided with temporary or partial care apart from their parents, whether for profit or otherwise, and excludes—

- (a) boarding schools;
- (b) school hostels; and
- (c) any establishments which operate mainly for the tuition or training of children and which are controlled by the State or registered or approved by the State;

"compulsory school-going age" means the age at which it is compulsory for a child to enter grade 1 in terms of the applicable law;

"council" or "municipal council" means the eThekwini municipal council, a municipal council referred to in section 157(1) of the Constitution;

"health compliance certificate" means:

- (a) in the event of a child care facility where a maximum of six children are to be accommodated, the certificate issued by the Municipality for the purposes of

registration in terms of this by-law ; or

- (b) in the event of a child care facility where seven or more children are to be accommodated, a certificate issued by the Municipality for the purposes of registration in terms of the Act,

and which confirms that the premises, and the facilities and services available on those premises, comply with this By-Law;

"health compliance certificate holder" means a person to whom a health compliance certificate has been issued in terms of this By-law, and includes—

- (a) a legal person;
- (b) a partnership;
- (c) an association;
- (d) a trust; and
- (e) a person acting on behalf of a health compliance certificate holder;

"Municipality" means the eThekwini Municipality, a category A municipality as envisaged in terms of section 155(1) of the Constitution of South Africa and established in terms of Provincial Notice No. 343 of 2000 (KZN);

"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;

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

"person in charge" includes—

- (a) the owner of a child care facility;
- (b) the principal of a child care facility; and
- (c) any person who is apparently in control of a child care facility;

"play area" means a portion of a premises set apart for children to play;

"premises" means any land or building or part of any land or building in or on which a child care facility is operated; and

"suitable" means that which is suitable in the reasonable opinion of the Municipality.

2. Interpretation of By-law

If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

3. Objects of By-law

The objects of this By-law are to—

- (a) regulate the operation of child care facilities by requiring operators to apply for a health compliance certificate;
- (b) ensure that the premises on which child care facilities are operated are age appropriate and suitable for the health and well-being of children;
- (c) impose minimum safety standards; and
- (d) make provision for the medical care of children while attending child care facilities.

4. Application of By-law

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

5. Existing child care facilities

- (1) An authorised official may grant an extension of time to a person who was operating a child care facility before the date of commencement of this By-law so that such person may comply with the provisions of this By-law within 9 months of the date of commencement.
- (2) The Municipality may, in any case where reasons to its satisfaction are given, extend the period stated in subsection (1) by not more than a further 12 months.

Chapter 2 Certificates

6. Application for a Health compliance certificate

- (1) No person may operate a child care facility on any premises unless he or she has been—
 - (a) issued with a health compliance certificate where the facility provides care for six or less children; or
 - (b) registered in terms of the Act where the facility provides care for seven or more children.
- (2) Application for a health compliance certificate in terms of this by-law must be made to the Municipality in writing by completing and submitting an application form as determined.
- (3) The Municipality may, before considering such application, require that it be furnished

with any information in connection with the application concerned which it may deem necessary.

- (4) Subject to subsection (5) 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 child care facility; and
 - (b) facilities and services available on those premises,comply with this By-law.
- (5) The health compliance certificate issued in terms of subsection (4) may be issued either unconditionally or on such conditions that the Municipality may deem necessary.
- (6) Every health compliance certificate must contain the following minimum information:
 - (a) the maximum number of children which may be cared for on the approved premises;
 - (b) the maximum number of children of different age groups which may be cared for on the approved premises;
 - (c) the minimum and the maximum ages of the children permitted to be cared for on the approved premises;
 - (d) the hours during which the child care facility may operate; and
 - (e) the date upon which the health compliance certificate expires.
- (7) 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.
- (8) A health compliance certificate is issued in respect of specific approved premises, which means that a health compliance certificate—
 - (a) becomes invalid if a health compliance certificate holder dies or ceases to operate a child care facility from the approved premises;
 - (b) is not transferable to any other person;
 - (c) is not transferable to, or valid for, any other child care facility or premises which 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 the child care 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 his or her child care 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 alterations; and
 - (b) apply for and obtain a new health compliance certificate before beginning to operate a child care facility from those altered premises.
- (11) A health compliance certificate issued in terms of this section may be cancelled by the Municipality after one month's written notice of its intention to cancel the health compliance certificate has been given to the health compliance certificate holder concerned, and after consideration by the Municipality of any representations which may be submitted in pursuance of such notice.
- (12) The cancellation of a health compliance certificate shall take effect on the date specified in the cancellation notice issued by the Municipality, which date shall not be less than 60 days after the date upon which the notice of cancellation was given.
- (13) Application for annual renewal of a health compliance certificate must be made to the Municipality in writing by completing and submitting an application form not later than one month before the health compliance certificate expires.

Chapter 3

General requirements for premises

7. Compliance with National Building Regulations

- (1) Every structure on premises on which any child care facility is operated or is to be operated must comply with the requirements of the National Building Regulations.
- (2) The authorised officer shall be entitled to approve an informal structure on any premises on which a child care facility is operated or is to be operated, provided that the structure—
 - (a) is stable;
 - (b) is waterproof;
 - (c) is sufficiently ventilated;
 - (d) is constructed of materials which are safe;
 - (e) is supplied with a portable fire extinguisher or other appropriate fire fighting equipment;

- (f) does not contain any physical features which present or might present a risk to children; and
 - (g) complies with any other additional requirements determined by the Municipality from time to time.
- (3) The Municipality may at any time amend the list in subsection (2) to keep in accordance with the safety and well-being of children.

8. Indoor play areas

- (1) A separate indoor play area must be provided on every premises on which a child care facility is operated.
- (2) The indoor play area must—
 - (a) be used for play only;
 - (b) provide not less than 1,5 m² of free floor area per child;
 - (c) separate children under the age of three years from children over the age of three years (movable partitions may be used to create this separation); (d) have exterior walls and a roof which is impermeable to wind and rain;
 - (e) have windows which open to provide sufficient natural light and cross-ventilation;
 - (f) have a floor which has a smooth, impermeable surface that is easy to wash; and
 - (g) have sufficient safe indoor play equipment.

9. Outdoor play areas

- (1) An outdoor play area must be provided on every premises on which a child care facility is operated.
- (2) The outdoor play area must—
 - (a) comprise of not less than 2 m² of outdoor area per child;
 - (b) be, in the opinion of the Municipality, a safe area for children of the age concerned to play;
 - (c) not have any excavations, steps, projections, levels or surfaces that may, in the opinion of the Municipality, be dangerous or may constitute a hazard; and
 - (d) have sufficient safe outdoor play equipment.
- (3) If no outdoor play area is available at a premises, the health compliance certificate holder may, subject to the approval of the Municipality, substitute an additional indoor play area of 1.5 m² per child for the outdoor play area.

10. Toilets

- (1) Adequate toilets must be provided for the children on every premises on which a child care facility is operated.
- (2) Where a sewer reticulation system or other sewage disposal system approved by the Municipality, and a supply of water, are available on the premises, one approved toilet must be provided for every 20 children.
- (3) Where neither a sewer reticulation system nor other sewage disposal system approved by the Municipality, and no supply of running water, are available on the premises, then the following must be provided:
 - (a) an approved toilet on the premises or immediately adjacent to the premises; or
 - (b) An approved chemical toilet or other acceptable alternative that is hygienic or safe for every 8 children.
- (4) Where containers are provided as contemplated in subsection (3)(b)–
 - (a) the contents of the containers must be disposed of regularly during the day into approved toilet;
 - (b) the containers must be kept in a clean and sanitary condition at all times;
 - (c) the container must be of a size suitable for use as a toilet and must be placed under a properly constructed seat; and
 - (d) the container must have a tight-fitting lid which is applied when the containers are removed for emptying.
- (5) Toilets must have an adequate–
 - (a) supply of toilet paper, soap and paper towels available and accessible to the children; and
 - (b) number of bins with self-closing lids for the disposal of paper, paper towels, tissues and other waste materials.

11. Washing facilities

- (1) Adequate washing facilities must be provided for the children on every premises on which a child care facility is operated.
- (2) Where a sewer reticulation system or other sewage disposal system approved by the Municipality, and a supply of running water, are available on the premises, hand washbasins must be provided as follows:
 - (a) one hand washbasin must be provided for every 20 children;
 - (b) hand washbasins must be placed at a height convenient for children; and
 - (c) hand washbasins must be supplied with running water.

- (3) Where neither a sewer reticulation system or other sewage disposal system approved by the Municipality, nor a supply of running water, are available on the premises—
 - (a) the washing facilities must be supplied with a minimum of 25 litres of potable water a day in a potable water container which—
 - (i) can be closed; and
 - (ii) must be accessible for supply to the hand washbasins: Provided that water is dispensed from the container for use in the hand washbasin and that no children wash in the container;
 - (b) one suitable container must be supplied for every 20 children; and
 - (c) a container or containers must be placed at a height convenient for children.
- (4) Washing facilities must have an adequate:
 - (a) supply of soap and paper towels available and accessible to the children; and
 - (b) number of bins with self-closing lids for the disposal of paper, paper towels, tissues and other waste materials.
- (5) If water supply to the child care facility is interrupted for any reason, the person in charge of the child care facility must—
 - (a) implement an alternate water supply arrangement within 24 hours of interruption of water supply; or
 - (b) close the child care facility until water supply is restored.

12. Kitchens

- (1) Every child care facility which provides meals to children from a kitchen on the premises must have a separate approved area set aside, with due regard for the safety of children, as a kitchen for the preparation of food and the washing up and rinsing of crockery, cutlery, pots, pans and other kitchen utensils.
- (2) The kitchen must—
 - (a) have a double bowl sink;
 - (b) have a hot water supply;
 - (c) have a separate hand washbasin;
 - (d) be arranged so that the utensils and other kitchen equipment are inaccessible to children; and
 - (e) meet the requirements of the Regulations Governing General Hygiene Requirements For Food Premises and the Transport of Food made in terms of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972)

and published by Government Notice R962 of 23 November 2012.

- (3) No person may provide meals to children in a child care facility from a kitchen on the premises unless he or she has been issued with a certificate of acceptability by the Municipality in respect of that kitchen.
- (4) If any child at a child care facility is bottle-fed,—
 - (a) the bottles must be clearly marked with the name of the child;
 - (b) the bottles must be supplied with suitable lids or caps;
 - (c) any filled bottles brought from home must be suitably stored in the kitchen in a cooler box or refrigerator in such manner as to prevent contamination and spoilage; and
 - (d) the child's bottles must be suitably rinsed in the kitchen.
- (5) The children must not have access to a kitchen contemplated in subsections (1), (2) or (3), or to any storage space or storage facility contemplated in subsection (4).
- (6) Where there is no formal kitchen as stated in section 12(2), an area must be demarcated and set aside for the above activities to take place.

13. Storage

- (1) Any premises on which a child care facility is operated must have adequate and suitable storage space and storage facilities for—
 - (a) food, crockery, cutlery and kitchen utensils, if a kitchen is provided;
 - (b) the personal belongings of each child; and
 - (c) the personal belongings of the staff of the child care facility.
- (2) The storage facilities must be lockable and reasonable steps must be taken to ensure that children do not have access to any storage space or storage facility contemplated in subsection (1).

14. Seating and resting

- (1) Any premises on which a child care facility is operated must—
 - (a) if seating is provided, have suitable and safe seating; and
 - (b) if tables are provided, have suitable and safe tables which are the correct size to ensure that each child sits comfortably.
- (2) If full day care is provided at a child care facility, every child at the facility must have an approved resting or sleeping mat or mattress which is—

- (a) marked with the name or symbol of the child to whom the mat or mattress is allocated;
 - (b) made of suitable waterproof material; and
 - (c) covered with a removable washable cover which is also marked with the name symbol of the child to whom the mat or mattress is allocated.
- (3) If blankets are provided at the child care facility, then they must be marked with the name or symbol of the child to whom the blanket is allocated.
- (4) Reasonable steps must be taken to ensure that a child does not share a sleeping mat or mattress, or any blanket, with another child.
- (5) Washing of linen, blankets or duvet covers must be done on a weekly basis or each time it is soiled.

15. Fencing

- (1) Any premises on which a child care facility is operated must be enclosed with approved fencing so as to prevent–
 - (a) a child from leaving the premises on his or her own accord;
 - (b) the entrance of domestic animals onto the premises; and
 - (c) unauthorised access or entry.
- (2) Fencing around a child care facility must meet the following requirements:
 - (a) the fencing must be not less than 2m high;
 - (b) horizontal members must be placed at intervals which make it difficult for a child climb; and
 - (c) the fence must be constructed of material which cannot reasonably cause harm to children.
- (3) A fence referred to in subsection (2) must have a gate which is self-closing and selflocking. A gate will only be regarded as self-locking for the purposes of subsection (2) if it cannot be readily opened by an unauthorised person. In this regard, a gate which closes by means of a latch only, with no other means of securing the gate, will not be regarded as selflocking.
- (4) If a pool is permitted on any premises on which a child care facility is operated, the pool must be–
 - (a) built in accordance with an approved plan, supported by an acceptable certificate from an engineer or other competent person;
 - (b) provided with an approved net;

- (c) fenced in the manner contemplated in subsection (2); and
 - (d) provided with a suitable twin gate system with gates that are self-closing and selflocking, and which may close by means of a latch.
- (5) Portable pools are not permitted on any premises on which a child care facility is operated.

Chapter 4

Additional requirements for toilets: children under and over the age of 3

16. Toilets: older than three years

- (1) Toilets for children over the age of three years must be in an approved, screened-off and roofed area of the premises, separate to toilet facilities for children who are younger than three years.
- (2) Separate toilets must be provided for boys and girls of school-going age.

17. Toilets: under three years

- (1) Toilets for children who are under three years of age, or who are still in nappies, must include an approved separate nappy-changing area.
- (2) The nappy-changing area must have—
 - (a) a nappy-changing unit with an impermeable surface that can be easily cleaned;
 - (b) at least one hand washbasin;
 - (c) access to water: Provided that if no running water is available on the premises, approved source of clean potable water must be available and accessible to the nappy-changing area on a daily basis;
 - (d) disposable material for the cleaning of children who are in nappies;
 - (e) approved facilities for the cleaning of cloth nappies if children in cloth nappies attend the child care facility;
 - (f) approved separate containers for the storage of clean nappies and soiled nappies and other waste, as well as an approved area for the storage of containers containing soiled nappies and other waste; and
 - (g) approved facilities for the cleaning of cloth nappies.

Chapter 5

Additional requirements for premises: after care centre

18. Separate facilities for after-care centre

If a child care facility cares for children of compulsory school-going age and children under compulsory school-going age on the same premises, facilities available for the children of compulsory school-going age must be separate from the facilities available for the children under compulsory school-going age.

19. Indoor study area

- (1) An indoor study area consisting of 1.5 m² of free floor area per child must be provided on any premises on which a child care facility operates an after-school centre for children of compulsory school-going age.
- (2) The indoor study area must have—
 - (a) exterior walls and a roof which is impermeable to wind and rain;
 - (b) windows which open to provide sufficient natural light and cross-ventilation; and
 - (c) a floor which has a smooth, impermeable surface that is easy to wash.

Chapter 6

Staff facilities

20. Staff toilet and hand-washing facilities

- (1) Any premises on which a child care facility is operated must have toilet and handwashing facilities for the staff of the child care facility.
- (2) The staff toilet and hand-washing facilities must be—
 - (a) easily accessible to the staff;
 - (b) separate from the toilet and wash facilities used by the children; and
 - (b) provided with soap and towels at all times.

21. Bathroom facilities of staff resident on the premises

If any staff member of a child care facility resides on the premises on which the child care facility is operated, the toilet and bathroom facilities for the staff must be easily accessible from their living quarters.

Chapter 7

Safety and medical care

22. Sickbay

- (1) Every premises on which a child care facility is operated must have an area set aside as a sickbay for the treatment and care of any child who becomes ill or who is injured until such time as the child is collected by his or her parents or guardian.
- (2) The sickbay may only be used for the treatment of ill or injured children and may not, in the ordinary course of events, be used for the treatment or care of children who have become ill or injured outside the hours of operation of the child care facility.
- (3) The sickbay must be equipped with—
 - (a) an approved, fully lockable and fully equipped first-aid unit, which must be kept of the children's reach; and
 - (b) a bed or a mattress.
- (4) In addition, every sickbay must have an approved method for washing hands and every premises on which a child care facility is operated must have a working telephone available to notify parents or guardians of illness or injury and, where applicable, to summon medical assistance.

23. Medical care for children

- (1) The person in charge of a child care facility must—
 - (a) if a child becomes ill, or suffers an injury, requiring medical attention—
 - (i) notify the child's parent or guardian immediately; and
 - (ii) summon medical assistance or take the child to his or her medical practitioner;
 - (b) if a child becomes ill, or suffers an injury, but does not require medical assistance, provide the necessary care and treatment in the sickbay;
 - (c) if a child has a notifiable disease, notify the relevant authority immediately;
 - (d) if a child is under compulsory school-going age, ensure that he or she has completed the basic immunisation schedules as determined by the National Immunisation Programme;
 - (e) comply with the provisions of the regulations relating to the exclusion of children from school on account of an infectious disease, made under the Health Act, 1977 (Act No. 63 of 1977); and
 - (f) report cases of head lice to parents and ensure that children are not allowed back on the premises until the head lice have been eradicated.

- (2) The person in charge of a child care facility may only allow medication to be administered to a child in terms of written consent from the child's parents, which–
- (a) identifies the medication;
 - (b) specifies the dosage and frequency at which the medication must be administered and
 - (c) specifies the period for which the medication must be administered.

24. Safety

The person in charge of a child care facility must ensure that–

- (a) the children are under constant adult supervision and adequately protected against fire, hot water installations, electrical fittings and appliances, heating appliances and any other object or thing which may be dangerous or cause injury to any child;
- (b) adequate fire extinguishers are provided and that the premises otherwise comply with National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);
- (c) if the children are under compulsory school-going age, any slats or rails forming part of a fence, security gate, playpen, bed, cot, balustrade or any other object or structure whatsoever are–
 - (i) not more than 75 mm apart;
 - (ii) suitably installed and maintained in a good state of repair;
 - (iii) painted only with non-toxic paint; and
 - (iv) not less than 1m high, with the exception of fences which must, in terms of section 15(2), be not less than 2m high;
- (d) all medicines, pesticides, detergents and other substances that may be harmful to children are locked in a storage facility and are stored so as not to be accessible to any child;
- (e) no noxious or poisonous plants or shrubs grow on the premises;
- (f) no animal is kept on the premises without the approval of the authorised official;
- (g) no person known or suspected to be suffering from an infectious or contagious disease who has been in contact with such a person is allowed on the premises while that person is, in the opinion of the authorised official, capable of transmitting the infectious or contagious disease;
- (h) if the children are under compulsory school-going age, no swimming pool, sand pit or other structure is permitted on the premises without the approval of the authorised official; and

- (i) any reasonable measures that may, in the opinion of the authorised official, be necessary to protect the children from any physical danger are taken.

25. Maintenance

Any person in charge of a child care facility must ensure that every part of the premises on which the child care facility is operated, including any outdoor area and all structures and equipment, is maintained in good repair and in a clean and tidy condition.

26. Refuse

Any person in charge of a child care facility must provide—

- (a) an adequate number of bins with liners, inside the premises, for the disposal of paper, paper towels, tissues and other waste materials;
- (b) an approved refuse area, which is roofed and is graded to a gully and fenced; and
- (c) adequate refuse bins within the refuse area for the storage of refuse pending removal by the Municipality or an approved contractor.

27. Staff

- (1) Any person in charge of a child care facility must ensure that—
 - (a) every employee working on the premises is physically clean and in a state of good health;
 - (b) no person on the premises uses tobacco, any tobacco product, alcohol or any other harmful substance in the presence of any child; and
 - (c) no person on the premises is under the influence of alcohol, drugs or any other harmful substance.
- (2) All employees must be subjected to criminal clearance checks before employment can be secured with the child care facility.
- (3) At least one member of staff must be suitably qualified to administer first aid.
- (4) The ratio of child care workers to children must be as follows:
 - (a) 0-2 years, requires 1 care worker, 1 assistant to 8 children;
 - (b) 2-3 years, requires 1 care worker, 1 assistant to 15 children;
 - (c) 3-6 years, requires 1 care worker, 1 assistant to 20 children; and
 - (d) six years and older require 1 care worker to 30 children.

28. Meals

Any person in charge of a child care facility must ensure that, if meals are provided for children, the meals meet the requirements of the relevant authority.

29. Transport

- (1) Any person in charge of a child care facility must, if transport is provided to children to or from the premises or elsewhere, ensure that—
 - (a) the doors of the vehicle have child locks, such that they cannot be opened from inside the vehicle by a child;
 - (b) no child is transported in the front seat of a vehicle or placed under the seat of a vehicle;
 - (c) no baby in a carry cot is placed under a seat of a vehicle;
 - (d) the vehicle in which any child is transported is not overloaded in terms of any applicable legislation;
 - (e) the driver of the vehicle in which any child is transported is licensed to transport passengers in accordance with the applicable legislation;
 - (f) the vehicle in which any child is transported is licensed to transport passengers has car seats and seat belts and is roadworthy in accordance with the applicable legislation; and
 - (g) the vehicle is fitted with seat belts and car seats which, given the age of the children transported, comply with the applicable legislation.
- (2) If children under compulsory school-going age are transported, then the person who operates the child care facility must ensure that while being transported, the children are supervised by at least one adult apart from the driver of the vehicle.
- (3) Any person in charge of a child care facility must ensure compliance with the provisions of subsections (1) and (2) regardless of whether transport is provided by that person, the child care facility, or by a third party on behalf of that person or the child care facility.

Chapter 8 Administrative requirements

30. Applications for admission

- (1) The person in charge of a child care facility must ensure that every child's parent or guardian makes written application for the child to attend the facility.
- (2) Every application for a child to attend a child care facility must include the following

minimum information:

- (a) the child's full name;
 - (b) the child's date of birth;
 - (c) the child's age;
 - (d) the child's identity number, where applicable;
 - (e) the child's sex;
 - (f) the name of each parent or guardian;
 - (g) the residential address and telephone numbers (landline and, if applicable, cell phone) of each parent or guardian;
 - (h) the place of work and work telephone numbers of each parent or guardian;
 - (i) the name, address and telephone numbers of a responsible person, other than parent or guardian, who may be consulted in emergencies; and
 - (j) the name, address and telephone number of the child's medical practitioner.
- (3) Every application for a child to attend a child care facility must include the parent's or guardian's consent to the owner consulting the child's medical practitioner when the child is in need of medical attention.
- (4) The person in charge of a child care facility must ensure that the date on which the child is admitted to the facility and the date on which the child ceases to be cared for at the facility are recorded on the application form.

31. Medical reports

The person in charge of a child care facility must, at the same time that the application form is completed, obtain from the parent or guardian of each child admitted to the child care facility a report which contains the following minimum information:

- (a) the child's general state of health and physical condition;
- (b) the nature and dates of any operations that the child has undergone;
- (c) the nature and dates of any illnesses or communicable diseases that the child has suffered from;
- (d) the details of allergies that the child suffers from;
- (e) information about any medical treatment that the child is undergoing or has undergone and
- (f) if the child is under compulsory school-going age, the details of any immunisation that child has received.

32. Registers

The person in charge of a child care facility must keep—

- (a) a general register in which is recorded the details listed in sections 30(2) and 31 regarding every child presently admitted at the facility; and
- (b) an attendance register in which is recorded the presence or absence of each child on a daily basis and, in the case of absence, the reasons for the absence.

33. Incident book

The person in charge of a child care facility must keep a journal, diary or other similar book in which important or significant events relating to the child care facility and the children, including illnesses and accidents, and the details of medications administered, are recorded.

34. Communication book

The person in charge of a child care facility must ensure that each child is issued with a communication book which is sent home with the child each day and which provides the basis for communication between the child care facility and parents.

35. Retention of records

- (1) The person in charge of a child care facility must keep records for the following time periods:
 - (a) application forms and medical forms: a minimum of 2 years after the date on which the child ceases to be cared for at the facility; and
 - (b) general registers, attendance registers and journals: a minimum of 2 years after the date of the last entry in each of those documents.
- (2) The records must be retained in a safe place allowing ready access by the person who operates the child care facility and reasonable steps must be taken to prevent damage to or destruction of the records.

36. Suspension or termination of operation

A health compliance certificate holder must notify the Municipality in advance and in writing if he or she intends suspending or terminating the operation of the child care facility to which his or her health compliance certificate relates.

Chapter 9

Offences, penalties and withdrawal of certificates

37. Offences

- (1) A person is guilty of an offence under this By-law if he or she—
- (a) unlawfully prevents an authorised official entry to his or her premises or causes permits any other person to prevent entry;
 - (b) obstructs or hinders an authorised official in the performance of his or her duties; causes or permits any other person to so obstruct or hinder the authorised official;
 - (c) refuses or fails 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;
 - (d) knowingly gives false or misleading information to an authorised official;
 - (e) impersonates an authorised official;
 - (f) contravenes or fails to comply with any provision of this By-law;
 - (g) contravenes any provision or condition in respect of his or her health compliance certificate; or
 - (h) contravenes or fails to comply with any order or notice lawfully issued under this By-law.

38. Penalties

- (1) Any person who is convicted of an offence under this By-law is liable to a fine not exceeding an amount of R40 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 R 200 per day or imprisonment for a period not exceeding 10 days, for each day on which such offence continues or both such a fine and imprisonment, will be imposed.

39. Withdrawal of health compliance certificates

The Municipality may, in its discretion, withdraw a health compliance certificate and a certificate of acceptability where applicable—

- (a) if the health compliance certificate holder is convicted of a breach of any of the provisions of this By-law; or
- (b) where a change in legislation necessitates a withdrawal.

40. Right of entry and inspection of premises and records

A duly authorised official of the Municipality may, for any purpose connected with the

enforcement of this By-law, at all reasonable times and without prior notice enter any premises–

- (a) on which a child care facility is being operated; or
- (b) if he or she has reasonable grounds to suspect that a child care facility is being operated on the premises,

in order to carry out such examination, inquiry or inspection on the premises as he or she may deem necessary.

Chapter 10

Miscellaneous provisions

41. Delegations

- (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 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.

42. Appeals

- (1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against that decision in terms of 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 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 Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this By-law.
- (7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (5).

43. Repeal of laws and savings

- (1) The 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) All notices published under the Provincial Notice No. 94 of 1991 remain in full force and effect as if the said By-law has not been repealed as contemplated in subsection (1).
- (3) Any rights accrued or obligations incurred as contemplated in the laws referred to in subsection (2) remain in force, as if those laws have not been repealed.

44. Short title and commencement

This By-law is called the eThekwini Municipality: Child Care Facilities By-law 2015, 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

LAWS REPEALED (Section 43(1))

Number and year of law	Title	Extent of repeal
By-law No. 94 of 1991	City of Durban: Childminder Service By-law whole	The whole law