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Retail Market By-law 2014

Commences on 27 June 2014 unless otherwise noted

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.

WHEREAS there is a need for the Municipality to regulate and manage the operation of the 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;

WHEREAS the Municipality has legislative and executive competence relating to Markets;

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 Part B of Schedule 5 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 and application

1. Definitions

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 market;

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

"authorised official" means a person authorised to implement the provisions of this Bylaw, 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;

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

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

"fresh produce" means any kind of grown agricultural product authorised by the Municipality 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 Systems Act;

"manufacturer" means any person who sells or exposes for sale within the market, baskets or such articles manufactured by himself or herself, as the Municipality 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 Council" or "Council" means the eThekweni Municipal Council, a municipal council referred to in section 157(1) of the Constitution;

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

"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;

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

"person" means a natural person or juristic person;

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

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

"stallholder" means the holder of –

- (a) a valid permit issued by the Municipality 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;

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

"table holder" means a bona fide farmer authorised to occupy a table in terms of this Bylaw;

"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; and

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

2. Interpretation of By-law

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

3. Objects of By-law

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.

4. Application of By-law

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

Chapter 2 Management and control

5. Management authority

The Municipality is responsible for the management and control of the business of the markets.

6. Vehicular traffic

- (1) The Municipality is empowered to control and regulate the volume and movement of traffic entering the market 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) imposition of fines and impounding of vehicles 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 a 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 in terms of subsection (1) may be held by the Municipality until a fine in the amount determined by the Municipality is paid in full to secure the release thereof, together with an additional amount for storage if the vehicle concerned is not claimed within the prescribed timeframe.

Chapter 3 Trading and related activities

7. Poultry and birds

- (1) All live poultry or birds brought upon the market for sale must–
 - (a) be in a healthy condition and free from disease;
 - (b) be exposed in crates or boxes;
 - (c) be open to public view; and
 - (d) not be tied by the legs.

- (2) The stallholder must ensure that such poultry and birds are fed and given drinkable water in such a manner and at such times as may be determined by the Municipality.
- (3) The sale of poultry and birds on the market must be conducted in a manner determined by the Municipality.
- (4) After a sale has been concluded, 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 Municipality may instruct the stallholder to remove the poultry or birds as soon as they have been sold.
- (5) The Municipality may refuse to release poultry or birds if there is a reason to believe that they are unhealthy, or if the buyer has failed to comply with any condition of sale imposed.
- (6) No person may slaughter, destroy, pluck or clean poultry or birds on the premises of the market.
- (7) The Municipality may take all such steps as it may deem advisable to prevent or to stop the infliction of suffering, cruelty or rough handling of any poultry or birds.

8. Stallholder's permit

- (1) Any person who wishes to occupy a stall in the market must—
 - (a) make an application to the Municipality on a prescribed form for the occupation such stall;
 - (b) make payment of the prescribed fee; and
 - (c) obtain a permit issued by the Municipality authorising such person to occupy an allotted stall and conduct business therein on such terms and conditions as may be determined.
- (2) The issuing of a stallholder's permit in terms of subsection (1) is at the sole discretion of the Municipality, subject to section 11, the availability of stalls and the suitability of the applicant as determined by the Municipality.
- (3) Subject to due compliance with the applicable provisions of the Constitution and the rules of natural justice, the Municipality may, at any time, cancel 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.

9. Fees and charges

- (1) A stallholder's permit may not be issued by the Municipality 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 an authorised official.

10. Default in payment of stall fees

- (1) In the event of failure by a stallholder to make payment of a fee referred to in subsection 9(1) for the occupation of a stall on or before the stipulated date, as and when such fee becomes due, the right of the stallholder concerned to occupy such stall may be terminated in writing by the Municipality on written notice to the stallholder to vacate the relevant stall within a period stipulated in such notice.
- (2) Any failure or refusal by a stallholder to comply with a notice issued by the Municipality in terms of subsection (1) constitutes a further contravention of this By-law entitling the Municipality to eject without further notice the stallholder concerned from the relevant stall.

11. Allocation of stalls

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

12. Responsibilities of stallholders

- (1) A stallholder must—
 - (a) conduct business within the confines of the stall allotted to such stallholder by the Municipality in terms of this By-law;
 - (b) ensure that any poultry or birds sold in the market is sold from a crate or box approved by the Municipality containing suitable drinking vessels with a sufficient supply of clean water: Provided that the number of poultry or birds permitted to be accommodated in a cubicle must be determined by the Municipality;
 - (c) sell all articles by private treaty; and
 - (d) keep clean and tidy to the satisfaction of the Municipality any vehicle, basket or other receptacle brought in the market for the conveyance of goods for sale at the market.

13. Entrance and exit to the market

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

14. Closing hour

- (1) At the closing hour a warning bell must be rung, after which no further sales may take place in the market and all stallholders must forthwith remove all articles from the market.
- (2) Notwithstanding subsection (1), stallholders may, at the discretion of the Municipality and at their own risk, leave unsold articles on their allotted stalls.
- (3) Members of the public may not enter the market after the closing hour and any member of the public who is within the market at the closing hour must leave the market within 30 minutes after the closing hour.

15. Posting of notices

- (1) The Municipality may affix any notice relating to any matter affecting the market on a notice board in a prominent position within the market.
- (2) It is the responsibility of a stallholder to ensure that he or she consults the notice board on a daily basis.
- (3) Where the notice relates to any matter affecting a particular stallholder, such notice must be delivered to the stallholder concerned.
- (4) Notwithstanding subsection (3) all notices affixed on the notice board 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

16. Personal attendance and supervision

- (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 first obtained written permission from the Municipality to allow a third party 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 Municipality.

17. Vicarious Liability

- (1) A stallholder is responsible for the conduct in the market of any person employed by such stallholder or whom the stallholder concerned permits or allows to assist in carrying on the business of such 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 stallholder is deemed to include any person employed by or rendering assistance to a stallholder.

18. Inspection of articles

- (1) The Municipality 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 Municipality 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 stallholder concerned for inspection and has been inspected as prescribed by law; and
 - (b) the grade assigned to it as a result of such inspection has been clearly marked by such stallholder 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.

19. Municipality not responsible for loss

Neither the Municipality nor its authorised officials are 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.

20. Prohibited conduct

- (1) A person entering the market must at all times act in strict compliance with this By-law, as well as such lawful instructions and orders as may be issued or given by the Municipality 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 Municipality, 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 or offensive language;
 - (b) touting for customers;

- (c) interfering with or obstructing any employee of the market in the execution of his her duties;
 - (d) organising or conducting a meeting without obtaining the prior written consent of the Municipality;
 - (e) touching, tasting, smelling, handling or removing any fresh produce exposed for sale in such a way as to expose it to contamination or disease;
 - (f) keeping or exposing for sale any article or item of an offensive nature;
 - (g) smoking in any part of the market 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 Municipality;
 - (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 Municipality, 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 into the market or entering or remaining upon the market while under the influence of an intoxicating substance;
 - (o) damaging, ruining or tampering with any article brought into 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) A person may not, without the prior written approval of the Municipality,—
- (a) occupy a stall in the market other than the table allotted to such person by the Municipality;
 - (b) bring or cause to be brought onto the market any animal which is not for sale, except a guide dog used by a person who is visual impaired; or
 - (c) 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 Municipality from time to time, and otherwise than in compliance with such restrictions as to quantity or mass as the Municipality may from time to time specify.

- (4) 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 (4) must not re-enter any part of the market on the same day on which such person was so removed.
- (6) Notwithstanding subsections (4) and (5), the Municipality is empowered to exclude any person referred to in subsection (4) from the market for any period not exceeding 14 days.
- (7) Subject to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), an authorised 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 authorised official believes, on reasonable grounds, to have committed a serious offence in terms of this By-law or any other law.

Chapter 5 Miscellaneous

21. 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 subdelegated 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.

22. 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 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.
- (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 subsection (1) to (5).

23. Offences and penalties

- (1) A person commits an offence if he or she—
 - (a) contravenes any provision of this By-law;
 - (b) contravenes any conditions, restrictions or prohibitions imposed in terms of this law;
 - (c) fails to comply with any order, signage or terms of any notice displayed or serve on such person in terms of this By-law;
 - (d) obstructs, hinders, or in any manner interferes with an authorised official who is acting or entitled to act in terms of this By-law; or
 - (e) fails to obey any lawful instruction or direction given to him or her in terms of this Bylaw.
- (2) A person is guilty of a continuing offence if he or she continues with an offence after

notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence, or after he or she has been convicted of such offence.

- (3) 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.
- (4) In the case of a continuing offence, an additional fine or imprisonment for each day on which such offence continues or both such fine and imprisonment, will be imposed.
- (5) Notwithstanding the provisions of subsection (3), 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 (3).
- (6) If sufficient evidence is adduced to the satisfaction of the Head that the person referred to in subsection (5) has committed an alleged breach of this By-law, the Head may summarily find such person guilty of committing the alleged breach 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.

24. Repeal of laws and savings

- (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.

25. Short title and commencement

This By-law is called the Retail Market By-law 2014, and takes effect on the date of the publication thereof in the Provincial Gazette.

Schedule
LAWS REPEALED

Number and year of law	Title	Extent of repeal
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