

**EMAKHAZENI LOCAL MUNICIPALITY**



**DRAFT BYLAW**

**ACCOMMODATION ESTABLISHMENTS**

DRAFT

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## 1. Title

These by-laws are entitled the By-Laws on Accommodation Establishments of Emakhazeni Local Municipality.

## 2. Definitions

Unless it is clear that the context shows otherwise, in these by-laws –

**“accommodation establishment”** means any place in which accommodation is provided for gain to four or more people, with or without meals OR any premises in which the business of providing lodging with or without one or more meals per day is conducted or intended to be conducted for reward or gain, but does not include premises which is duly registered as a hotel under any law relating to the registration of hotels, or which provides lodging with one or more meals and has fewer than five beds or which provides no meals and has fewer than three rooms that are let or intended for letting;

**“Council”** means the Council of the Emakhazeni Local Municipality;

**“dormitory”** means a sleeping room in which sleeping accommodation is provided for four or more persons;

**“landlord or landlady”** means the person who owns or operates an accommodation establishment;

**“Municipality”** is either the body referred to in Section 2 of the Local Government: Municipal Systems Act 32 of 2000, or the area determined in terms of the Local Government: Municipal Demarcation Act 27 of 1998;

**“occupier”** means –

- i. any person in actual occupation of the premises; or
- ii. any person legally entitled to occupy the premises; or
- iii. any person having charge or management of the premises and includes any agent of such person when he is absent from the Republic of South Africa or his whereabouts are unknown.

**“official”** means a designated employee who is authorized in terms of paragraph 11 by the Municipality;

**“overcrowding”** means –

- i. a residential occupancy in excess of twelve occupants per sanitary convenience; and/or
- ii. occupancy of habitable rooms (being all rooms in a dwelling excluding kitchens, bathrooms and sanitary conveniences) for sleeping purposes where such occupation exceeds one adult person per 4 square meter and/or one child under 10 years of age per 2 square meter;

**“owner”** means –

- i. the person or persons in whom from time to time shall be vested the legal title to any immovable property;
- ii. in any case where a property is subject to a registered lease, the lessee of such property;
- iii. in cases where the person in whom the legal title is vested is insolvent or deceased, or is of unsound mind or whose estate has been assigned for the benefit of his creditors, the person in whom the administration of the property is vested as trustee, executor, curator, assignee or administrator;
- iv. in cases where the owner is absent, the agent or person receiving the rent of the property concerned;
- v. in any case where the property is beneficially occupied under a servitude or right similar thereto, the occupier of such property.

**“proprietor”** means the natural person who carries on or who is charged with carrying on of business by providing lodging or both lodging and meals for reward or gain and includes an owner of such property.

### **3. Scope of By-laws**

These by-laws apply to all persons who own or carry on the business of providing accommodation for gain in an accommodation establishment on premises within the Emakhazeni Municipal area of jurisdiction, but do not apply to a private home.

#### **4. Non-discrimination**

- 4.1. These by-laws are applied in such a way as not to discriminate between persons on any grounds;
- 4.2. These by-laws are applied in such a way as to respect and protect all people's rights to dignity, privacy, the right to trade freely as well as the right to an environment that is not harmful to anyone's health or well-being.

#### **5. Objects**

The objects of these by-laws are –

- 5.1. To provide procedures, methods and practices to regulate the operation of accommodation establishments within the Emakhazeni Municipal area.
- 5.2. To promote the achievement of a safe and healthy environment for the benefit of residents within the jurisdiction of the Emakhazeni Municipal area.

#### **6. Permit requirement**

- 6.1. A person may only operate an accommodation establishment within the Emakhazeni Municipal area with a permit authorizing that activity, issued by the Council.
- 6.2. The application form for such a permit is contained in Schedule 1 of these by-laws.
- 6.3. The Council may require an applicant to submit further particulars, plans or drawings.
- 6.4. The Council may issue a permit to the applicant on such conditions and restrictions and for such a period as the Council deem necessary, and against payment of the prescribed fee.
- 6.5. If the permit is issued for a specified period, it may be renewed if an application is made before the expiry of the permit.
- 6.6. The granting of a permit is conditional upon the effective prevention of any nuisance to the public or employees of the business or a danger to the health of the public or employees of the business.

## **7. Requirements for premises of accommodation establishments**

A person may only operate an accommodation establishment on premises which complies with the following requirements:

- 7.1. A room wholly or partly used by persons for sleeping in, may not be occupied by a greater number of persons than will allow-
  - i. less than 11,3 m<sup>3</sup> of free air space and 3,7 m<sup>2</sup> of floor space for each person over the age of 10 years; and
  - ii. less than 5,7 m<sup>3</sup> of free air space and 1,9 m<sup>2</sup> of floor space for each person under the age of 10 years;
- 7.2. A latrine, passage, staircase, landing, bathroom, cupboard, outbuilding, garage, stable, tent, storeroom, lean-to, shed, kitchen, dining room, food preparation area, cellar or loft may not be used as sleeping accommodation;
- 7.3. Every person in a dormitory or a room –
  - i. should be provided with a single bed, manufactured of metal or some other durable material and equipped with a mattress;
  - ii. should be provided with a separate locker or wardrobe with sufficient space to stow belongings or hang clothes, which locker or wardrobe must be fitted with a working lock and key;
  - iii. should have their bed placed in such a manner that its sides are at least one metre away from any part of any other bed;
- 7.4. An accommodation establishment must be provided with –
  - i. an area for the preparation and cooking of food, adequate for the use of and easily accessible to any occupier residing in the accommodation establishment;
  - ii. adequate separate wash-up facilities; and
  - iii. where meals are provided to persons housed in the accommodation establishment, a dining-room or adequate dining area with tables and chairs or benches and unobstructed floor area, including the area

occupied by tables, chairs and benches, of at least 1,2 m<sup>2</sup> for every seat provided for dining purposes;

- 7.5. An accommodation establishment must be provided with –
- i. one or more showers, each suitably placed in a separate compartment, easily accessible to every occupier, and fitted with waste pipes which comply with the provisions of the National Building Regulations and Building Standards Act; or
  - ii. a bath fitted with a waste pipe;

The facilities referred to in subparagraphs (i) and (ii) must be designated for the different genders;

- 7.6. An accommodation establishment must be provided with sanitary fixtures as prescribed in the National Building Regulations and Building Standards Act and such fixtures must be designated for the different genders;
- 7.7. An accommodation establishment must be provided with an adequate supply of hot and cold running potable water;
- 7.8. All rooms and passages must be provided with adequate ventilation and lighting as prescribed in the National Building Regulations and Building Standards Act;
- 7.9. Openings such as doors, windows or fanlights may not be obstructed in a manner that interferes with the lighting or cross ventilation they provide;
- 7.10. A separate area with metal bins or canvas laundry bags must be provided for the storage of dirty articles used in connection with an accommodation establishment, pending removal to be laundered and if articles used in connection with an accommodation establishment are cleaned on the premises, facilities for the washing, drying and ironing must be provided.
- 7.11. An area for the storage of furniture and equipment and an area for the storage of clean bed and other linen, towels, blankets, pillows and other articles used in connection with an accommodation establishment, must be provided;

- 7.12. All –
- i. walls and ceilings must have a smooth finish and be painted with a washable paint, or have some other approved finish;
  - ii. floor surfaces of the kitchen, scullery, laundry, bathroom, shower, ablution room, toilet and sluice room must be constructed of concrete or some other durable, impervious material brought to a smooth finish; and
  - iii. floor surfaces of every habitable room must be constructed of an approved material;
- 7.13. The following facilities must be provided for people who are employed and also reside on the premises:
- i. Sleeping quarters equipped with a bed, mattress and locker which comply with the provisions of paragraphs 7.1 to 7.3 for each employee; and
  - ii. if employees are not provided with meals in the accommodation establishment, food preparation and dining facilities that comply with the provisions of paragraph 7.4.
- 7.14. Adequate changing facilities must be provided for non-resident employees;
- 7.15. Adequate ablution and sanitary facilities, which comply with the provisions of paragraphs 7.5 and 7.6, must be provided for resident and non-resident employees;
- 7.16. An adequate refuse holding area must be provided, including a refuse receptacle with a close-fitting lid in every room used for sleeping and an approved refuse removal system must be maintained;
- 7.17. All walls, floors and roofs must be constructed in a manner which prevents wind or rain entering an accommodation establishment or dampness entering the interior surfaces of any wall or floor;
- 7.18. All accesses to an accommodation establishment must have a door which when closed, prevents the wind or rain entering the premises; and
- 7.19. All windows must be constructed in a manner that prevents rain entering the accommodation establishment when the windows are closed and prevents the diminishing of the natural illumination of the room.



## **8. Duties of operators of accommodation establishments**

Every person who conducts an accommodation establishment must –

- 8.1. keep the premises and all furniture, fittings, appliances, equipment, containers, curtains, covers, hangings and other soft furnishings, table linen, bed linen, and other bedding, towels and cloths of whatever nature used in connection with the accommodation establishment, in a clean, hygienic and good condition at all times;
- 8.2. clean and wash any bed linen, towel, bath mat or face cloth after each use by a different person;
- 8.3. take adequate measures to eradicate pests on the premises;
- 8.4. provide a container made of a durable and impervious material, equipped with a close-fitting lid, in every toilet used by females;
- 8.5. provide towel rails or hooks in every bathroom and in every room in which there is a wash-hand basin or shower;
- 8.6. store all dirty linen, blankets, clothing, curtains and other articles used in connection with an accommodation establishment in the manner provided in paragraph 7.10;
- 8.7. store all clean linen, towels, blankets, pillows and other articles used in connection with the accommodation establishment in the manner provided in paragraph 7.11;
- 8.8. keep all sanitary, ablution and water supply fittings in good working order;
- 8.9. keep every wall, surface and ceiling, unless constructed of materials not intended to be painted, painted at the intervals to ensure that the area painted, remains clean and in a good state of repair; and
- 8.10. handle refuse in the manner provided in paragraph 7.16.
- 8.11. ensure that he or she has waste storage facilities which comply with the By-Laws on Waste Management.

## **9. Requirements relating to water and sanitation**

A landlord or landlady must –

- 9.1. Provide to persons using the accommodation –

- i. a regular supply of potable water which is sufficient for their use; and
  - ii. latrines which are sufficient in number and capacity;
- 9.2. Ensure the proper removal and disposal of household refuse at least once a week;
- 9.3. Ensure the proper storage, removal and disposal of faecal matter, except where pit latrines or a method for the adequate treatment of such matter by enzymatic or chemical process;
- 9.4. Ensure that bathrooms contains a shower or bath and a hand basin, fitted with taps that provide hot and cold running potable water at all times;

### **10. Preparation and serving of food**

- 10.1. A landlord or landlady who prepares or serves food on the premises for consumption by guests, irrespective of whether it is paid for separately or included in the cost of the accommodation, must comply with the provisions of the Regulations Governing General Hygiene Requirements for Food Premises and the Transport of Food published under Government Notice No. R.918 of 30 July 1999, as amended by Government Notice No. R.1125 of 8 August 2003, made in terms of section 35 read together with section 40 of the Health Act, 1977 (Act 63 of 1977).
- 10.2. A landlord or landlady may only prepare or serve food on the premises if he/she is in possession of a certificate of acceptability issued by the Council in terms of the regulations referred to in paragraph 10.1 above.
- 10.3. A landlord or landlady who wants to apply for a certificate of acceptability referred to in paragraph 10.2 above, must apply for it on an application form as set out in Schedule 2.
- 10.4. The completed application form must be submitted to the office of the Municipal Manager.
- 10.5. If the Council grants the certificate of acceptability to the landlord or landlady, it must issue to that person a certificate similar to that contained in Schedule 3.

## **11.Appointment, responsibility and powers of officials**

- 11.1. Without limiting the application of any other law or a person responsible for carrying out the provisions of such law, the person or persons responsible for carrying out the provisions of these By-laws within the Emakhazeni Local Municipality are the Building Inspector, Environmental Practitioner, Health Officer and/ or any other person appointed by the Council in terms of sections 22, 24 or 25 of the Health Act, 1977.
- 11.2. The persons referred to in paragraph 11.1 have such powers and duties as set out in the Act and regulations made in terms of the Act.

## **12.Offences and Penalties**

If a person -

- a) Contravenes section 57 of the Health Act, 1977, then said section will apply;
- b) Contravenes the Regulations, then the penalties as prescribed in the Regulations will apply.
- c) Contravenes paragraph 6(1) of these By-Laws or supplies false or misleading information to the Council, he or she commits an offence and is, on conviction, liable to a fine or in default of payment, to imprisonment for a period not exceeding 6 months, or to such imprisonment without the option of a fine, or to both such fine and imprisonment and in the case of a successive or continuing offense, to a fine for every day such offense continues, or in default of payment thereof, to imprisonment for a period not exceeding 6 months.

## **13.Notice of compliance**

- 13.1. If a person fails to comply with the requirements contained in paragraphs 7, 8 or 9, the Council may serve a notice of compliance on that person.
- 13.2. The notice of compliance must state the following –
- i. The name and residential or postal address of the affected person;
  - ii. The requirement which has not been complied with;

- iii. The measures required to remedy the situation;
  - iv. That the person must, within a specified period, take the measures to comply with the notice and complete the measures before a specified date;
  - v. The person may, within 14 days from the date of the notice, make written representations in the form of a sworn statement or affirmation to the Council at a specified place.
- 13.3. When Council considers measures or periods envisaged in paragraph 13.2 (iii) or (iv), it must have regard to the principles and objects of these by-laws, the nature of the non-compliance, and other relevant factors.
- 13.4. If a person does not make representations in terms of paragraph 13.2 (v) and the person fails to take the measures before the date contemplated in paragraph 13.2 (iv), he or she commits an offence and the Council may, irrespective of any fines which may be imposed in terms of paragraph 12, also act in terms of paragraph 13.6.
- 13.4.1. If representations are not lodged within the time contemplated in terms of paragraph 13.2 (v), it will not be considered, except if the person has shown good reason and the Council condones the late lodging of the representations.
- 13.4.2. Council must consider timely representations and any response thereto by an official.
- 13.4.3. The Council may, by its own choice, conduct further investigations to verify facts and the results of such investigation must be made available to the permit holder, who must be given an opportunity to make a further response if he or she so wishes and the Council must also consider the further response.
- 13.4.4. After considering the representations and any responses and further responses, the Council must make an order in writing and serve a copy of it on the person.

- 13.4.5. The order referred to in paragraph 13.5.4, must confirm, alter or set aside the notice of compliance and where such notice is confirmed or altered, Council must inform the person that he or she must, within the period specified in the order, discharge the obligations set out in the order and that failure to do so constitutes an offence.
- 13.4.6. If a person fails to discharge the obligations in paragraph 13.5.5, he or she commits an offence and the Council may, irrespective of any fines which may be imposed, also act in terms of paragraph 13.6.
- 13.5. Council may take such measures as it deems necessary to remedy the situation and the cost thereof must be paid to Council in accordance with paragraph 15.
- 13.6. If a landlord or landlady fails to comply with a compliance notice, the Council may immediately withdraw the permit.

#### **14. Costs**

- 14.1. If a person fails to take the measures required of him or her by a notice of compliance contemplated in paragraph 13, the Council may, subject to paragraph 14.3 recover as a debt, all costs incurred as a result of Council acting in terms of paragraph 13.6, from that person and any or all of the following persons:
- i. the owner of the land, building or premises; or
  - ii. the person or occupier in control of the land, building or premises or any person who has or had a right to use the land at the time when the situation came about.
- 14.2. The costs recovered must be reasonable and may include, without being limited to, costs relating to labour, water, equipment, administrative and overhead costs incurred by the Council under paragraph 13.6.
- 14.3. If more than one person is liable for costs incurred, the liability must be apportioned as agreed among the persons concerned according to the degree to which each was responsible for the emergency resulting from their respective failures to take the required measures.

## **15. Authentication and service of notices and other documents**

- 15.1. A notice issued by the Council in terms of these by-laws is deemed to be duly issued if it is signed by an official authorized by Council.
- 15.2. Any notice or other document that is served on a person in terms of these By-Laws is regarded as having been duly served –
- i. when it has been delivered to that person personally;
  - ii. when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 years;
  - iii. when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgment of the posting thereof from the postal service is obtained;
  - iv. if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs 15.2 (i), (ii) or (iii);
  - v. if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or business premises to which it relates;
  - vi. in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate;
  - vii. when it has been delivered, at the request of that person, to his or her e-mail address.
- 15.3. Service of a copy is deemed to be service of the original.
- 15.4. When any notice or other document is served on the owner, occupier or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question, and it is not necessary to name that person.

## **16. Appeal**

- 16.1. a person whose rights are affected by a decision of an official of the Council acting in terms of these By-Laws may appeal against that decision 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.
- 16.2. The appeal authority contemplated in paragraph 16.3 must consider the appeal, and vary, confirm or revoke the decision, but no such variation or revocation of a decision may detract from any right that may have accrued as a result of the decision.
- 16.3. When the appeal is against a decision taken by –
  - i. a staff member other than the Municipal Manager, the Municipal Manager is the appeal authority;
  - ii. the Municipal Manager, the Executive Mayor is the appeal authority; or
  - iii. a political structure or political office bearer or a Councillor, the Council is the appeal authority.
- 16.4. The appeal authority must commence with an appeal within six weeks of receipt of the notice of appeal and decide the appeal within a reasonable time.

## **17. Saving and transitional provision**

A person who, at the date of commencement of these By-Laws, owns or operates an accommodation establishment without a permit, must, within a period of six months, comply with the provisions of these By-Laws.

## **18. Repeal of By-Laws**

The provisions of any by-laws previously promulgated by the Council or by any of the disestablished municipalities now incorporated in the Emakhazeni Local Municipality, are hereby repealed as far as they relate to matters provided for in these By-laws, and insofar as it has been made applicable to the municipality by the authorization for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998.

**19.Short title**

These By-Laws are called the Emakhazeni By-Laws on Accommodation Establishments.

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**SCHEDULE 1**  
**Paragraph 6.2**

**APPLICATION FOR PERMIT FOR ACCOMMODATION ESTABLISHMENT**

**Person in charge:** \_\_\_\_\_

**Telephone number:** \_\_\_\_\_

**ID number:** \_\_\_\_\_

**The nature of the services to be rendered:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**The number of people that can be accommodated:** \_\_\_\_\_

**The area within the municipality in which the accommodation establishment is to be operated:** \_\_\_\_\_

\_\_\_\_\_

**The address of the accommodation establishment (street name and number):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**The number of employees employed on the premises:** \_\_\_\_\_

**Will food be prepared or served on the premises? (Circle the applicable answer)**

**Yes**

**No**

**Particulars regarding the preparation of food:** \_\_\_\_\_

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**Particulars regarding the disposal of waste:** \_\_\_\_\_

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\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

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**SCHEDULE 2**  
**Paragraph 6.2**

**APPLICATION FORM FOR A CERTIFICATE OF ACCEPTABILITY FOR FOOD  
PREMISES OF ACCOMMODATION ESTABLISHMENT**

**A. PERSON IN CHARGE**

Surname and first names of person in whose name the certificate of acceptability must be issued \_\_\_\_\_

ID number: \_\_\_\_\_

Address: Postal address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Residential address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone number: Business \_\_\_\_\_ Residential \_\_\_\_\_

**B. PARTICULARS OF FOOD PREMISES**

Name of food premises (if any) \_\_\_\_\_

Erf no (if applicable) \_\_\_\_\_

**Address where the food premises can be inspected** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. FOOD CATEGORY**

**List and describe the food items or the nature or type of food involved:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**D. NATURE OF HANDLING**

**List and describe what your activities will entail (e.g. preparation or packing and processing)** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**E. STAFF**

**Number of persons employed or to be employed**

**Men** \_\_\_\_\_ **Women** \_\_\_\_\_

**F. PARTICULARS OF EXEMPTION BEING APPLIED FOR (Regulation 15(1) of the Regulations)** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**G. PARTICULARS OF APPLICANT**

**Name:** \_\_\_\_\_

**Capacity (e.g. owner, managing director, secretary, manager)** \_\_\_\_\_

\_\_\_\_\_

**Postal address** \_\_\_\_\_

\_\_\_\_\_

**Telephone number** \_\_\_\_\_

**Date of application** \_\_\_\_\_

**Signature** \_\_\_\_\_

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**SCHEDULE 3**  
**Paragraph 10.5**

**CERTIFICATE OF ACCEPTABILITY FOR FOOD PREMISES OF ACCOMMODATION  
ESTABLISHMENT**

**A. ISSUING LOCAL AUTHORITY:** \_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE NUMBER:** \_\_\_\_\_

**NAME** \_\_\_\_\_ **TELEPHONE NUMBER** \_\_\_\_\_

\_\_\_\_\_ **OFFICIAL DATE STAMP**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B. FOOD PREMISES**

**Name (if any)** \_\_\_\_\_  
\_\_\_\_\_

**Address (location, erf no.)** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. PERSON IN CHARGE**

**Name:** \_\_\_\_\_

ID number: \_\_\_\_\_

**D. CERTIFICATION AND RESTRICTION**

It is hereby certified that the above-mentioned food premises comply with the provisions of regulation 5 and 6 of the Regulations published by Government Notice No. R918 of 30 July 1999 in respect of the handling of food in the manner specified.

Restriction, conditions or stipulation in terms of regulation 3(1)(b):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**E. SIGNATURE OF INSPECTOR**

**DATE**

\_\_\_\_\_

Name of inspector: \_\_\_\_\_

Official designation: \_\_\_\_\_

**F. EXEMPTIONS**

**DATE**

**SIGNATURE OF INSPECTOR**

**In terms of regulation 15**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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