

The Council of the uMhlathuze Municipality has in terms of section 156 of the Constitution, 1996 (Act No 108 of 1996), read in conjunction with sections 11 to 13 of the Municipal Systems Act, 2000 (Act No 32 of 2000), made the following by-laws:

UMHLATHUZE MUNICIPALITY BY-LAWS RELATING TO CHILDCARE SERVICES

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1. Definitions

(1) Unless the context otherwise indicates -

“authorised officer” means an officer of the Council who has a delegated duty, function or power under these by-laws, in relation to the exercise or performance of that duty, function or power, shall refer to Environmental Health Practitioners in the employ of Council;

“child” means any person under the age of 18 (eighteen) years who is in the care of a childcare facility;

“childcare service” means any undertaking involving the custody and care of more than six children during the whole or part of the day on all or any days of the week;

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

“certificate” means a certificate issued in terms of Section 3 of these by-laws;

“certificate holder” means a person to whom a certificate has been issued in terms of Section 3 of these by-laws;

“communicable disease” means a communicable disease as defined by Section 1 of the National Health Act, 2003 (Act No 61 of 2003);

“Council” means the uMhlathuze Municipality and its successors in law, and includes the Council of that municipality or its Executive Committee or any other body acting by virtue of any power delegated to it in terms of legislation, as well as any authorised officer to whom the Executive Committee has delegated any powers and duties with regard to these by-laws;

“facility” means a place where either a childcare service or a childminder service is conducted, whichever is applicable, and **“service”** has a corresponding meaning;

“Health Act” means the National Health Act, 2003 (Act 61 of 2003);

“National Building Regulations” means the regulations published under the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

“occupier” includes any person in actual occupation of land or premises without regard to the title under which he or she occupies, and, in the case of premises sub-divided and let to lodgers or various tenants, includes the person receiving the rent payable to the lodgers or tenants whether for his or her own account or as agent for any person entitled thereto or interested therein;

“owner” includes any person that has title to any premises or land or any person receiving the rent or profits of any land or premises from any tenant or occupier thereof, or who would receive such rents or profits if such land or premises were let, whether for his or her own account or as agent for any person entitled thereto or interested therein: Provided that the “owner” in respect of premises on the Sectional Title Register opened in terms of section 12 of the Sectional Titles Act, 1986, (Act 95 of 1986) means the body corporate, as defined in that Act, in relation to such premises;

“premises” means the stand, including any buildings or part thereof and outdoor play areas in or upon which a childcare service or a childminder service is conducted;

(2) Words applying to any individual shall include persons and groups, and the masculine gender shall include females as well as males and the singular number shall include the plural and vice versa.

2. Application of by-laws

- (1) These by-laws shall apply to all childcare services and childminder services within the jurisdiction of the City of uMhlathuze.
- (2) Subject to the provisions of these by-laws, no person shall conduct a childcare service or a childminder service unless it has been registered as contemplated in Section 3 of these by-laws and is in possession of a valid certificate issued in terms of that section.
- (3) A person who is at the date of commencement of these by-laws conducting a childcare service or a childminder service shall, within one month of that date, or within such extended period as Council may allow, on written application made prior to the expiry of the said period, apply for registration of such service in terms of Section 3 of these by-laws. If any person conducting such a service fails to apply as aforesaid or his/her application is refused, he/she shall, if he/she continues to conduct such service after such period or after refusal of his/her application, be deemed to have contravened section 2(2) of these by-laws.
- (4) A person whose service has been registered in terms of Section 3 of these by-laws shall ensure that the service and the premises comply with the conditions and restrictions imposed upon the operation of the service.

3. Registration of Childcare Facilities and Childminder Facilities

- (1) Any person wishing to undertake the operation of a childcare or childminder service, must apply in writing, in a manner and form as near as possible to Form 1 of the Schedule, to the Council for such service to be registered for the intended purpose. If the applicant is not the owner of the premises, the written consent of the owner should accompany the application.
- (2) The Council may, before or during the consideration of the application, request such further information relating to the application as it deems necessary.
- (3) The Council may approve an application and register the service if it is satisfied that the applicant is a fit and proper person to conduct the relevant facility, and that no circumstances exist which are likely to be prejudicial to the health, safety and welfare of the children who are to be cared for at the facility.
- (4) The Council may, at any time before or after approval of an application in terms of this section, require the applicant to submit to the Council a report at his/her own cost from a registered psychologist pertaining to the applicant's state of mental health as well as a social report on the qualifications and criminal background of such applicant.
- (5) The Council may approve an application and register the facility if it is satisfied that the premises complies with:-
 - (a) the National Building Regulations;
 - (b) the Health Act;
 - (c) the Councils Town Planning Scheme in the course of preparation; and
 - (d) requirements relating to the premises on which the childcare or childminder service is to be conducted as contemplated in these by-laws.

- (e) as far as childcare facilities are concerned, registration with the Department of Social Development in accordance with the Childcare Act, 1983 (Act No 74 of 1983) as amended.
- (6) When approving an application for registration, the Council may impose such further conditions and restrictions as it deems fit.
- (7) Once the application for registration has been approved, the Council will issue a certificate which:-
 - (a) states the name of the person to whom it is issued;
 - (b) describes the premises in respect of which the application was approved;
 - (c) specifies any conditions or restrictions imposed in terms of subsection (6);
 - (d) will be valid for a period of two (2) years from the date of issue for which the premises will be so registered, alternatively until it is suspended or revoked in terms of these bylaws.
- (8) Neither registration nor the certificate is transferable to any other person, heir or successor-in-title of the certificate holder.
- (9) If the Council does not approve an application for the registration of a childcare or childminder facility, the Council must within 14 (fourteen) days of the decision:-
 - (a) inform the applicant of such a decision;
 - (b) provide written reasons for such refusal if so requested by the applicant; and
 - (c) may give the applicant an opportunity to comply, within a period determined by the Council, with the stated requirements of or any other conditions and/or requirements that the Council may stipulate.
- (10) A certificate holder shall, at least 30 days before expiry of the period referred to in subsection (7)(d), re-submit an application for registration in terms of this clause.

4. Cancellation of Registration

- (1) The authorised officer shall, by written notice to the certificate holder where possible, cancel registration of a childcare service if-
 - (a) the certificate holder is convicted of an offence under these By-laws or pays an admission of guilt in respect of any such offence;
 - (b) the certificate holder fails to comply with any condition or restriction imposed in terms of Section 3 (6) of these by-laws ; or
 - (c) the authorised officer is of the opinion that the certificate holder is an unsuitable person to conduct a childcare service, or that circumstances exist that are likely to be prejudicial to the health, safety and welfare of children being cared for by the service;
 - (d) if the applicant sell or vacates the premises;
 - (e) upon the applicant or owner's death; and
 - (f) if the certificate holder notifies Council of the permanent termination of the service as contemplated in section 5.

- (2) Upon cancellation of registration in terms of Subsection (1), the registration certificate shall cease to be valid and the facility has to be closed immediately, provided that before cancellation of the registration, the authorised officer may in his/her sole discretion, suspend cancellation to give the certificate holder an opportunity to remedy a defect in the premises or rectify an omission. If the certificate holder complies to his/her satisfaction, the authorised officer may elect not to cancel the registration. During the period of such suspension the certificate holder shall seize operation of the facility.

5. Termination of Service

The certificate holder shall immediately notify Council of the temporary or permanent termination or closure of the childcare facility to which the certificate relates.

6. Right of Entry and Inspection of Premises and Records

An authorised officer may, in the enforcement of these by-laws, at any reasonable time and without prior notice, enter any premises upon which a childcare or childminder service is being conducted, or upon which such officer has reasonable grounds for suspecting the existence of such service and conduct such examination, enquiry and inspection thereon as he/she may deem necessary.

7. Requirements for Childcare Facility

(1) Office, staff room and sick-bay:

- (a) If more than 30 children are cared for on the premises, provision should be made for a separate office large enough to be divided into a sick bay to accommodate at least two children, as well as a staff room where staff can rest and lock up their personal possessions.
- (b) The office, staff room and sickbay referred to in paragraph (a) can be combined.

(2) Indoor Play Area:

- (a) Provision has to be made for an indoor play area covering a minimum floor space of 1,8m² per child to be used for play, meals and rest.
- (b) Not more than one third of the compulsory floor space per child may consist of covered veranda.
- (c) Cots and mattresses utilised for sleeping purposes by children must be arranged so that there shall be a minimum of 50cm space between the cots and or mattresses.

(3) Kitchen:

- (a) The kitchen must comply with the following requirements:
 - (i) adequate and suitable cooking and washing facilities must be provided
 - (ii) a smoothly finished floor of concrete or any other impervious material;
 - (iii) adequate natural lighting and ventilation;
 - (iv) wall surfaces should have a smooth finish and should be painted with a washable paint;
 - (v) ceilings must be dust-proof;
 - (vi) all working surfaces must be of stainless steel or other impervious material;
 - (vii) cooling facilities for the storage of perishable food;
 - (viii) adequate storage space;

- (ix) adequate number of waste bins with tightly fitting lids;
- (x) adequate supply of potable as well as hot water and cleaning agents for the cleansing of equipment and eating utensils;
- (xi) the kitchen must be separate from the play area;
- (xii) the kitchen must not be accessible to the children;
- (xiii) all foodstuffs must be protected from contamination by dust, dirt, pests and any contaminating agent;
- (xv) kitchen staff has to wear personal protective clothing which must be maintained in a clean and tidy condition at all times.

(4) Sanitary facilities:

- (a) Subject to subsection (b), provision has to be made for –
 - (i) one toilet and one hand washing facility for every 20 or less children under 5 years of age, irrespective of sex; and
 - (ii) one toilet and hand washing facility for every 20 or less children above the age of 5 years, separate for each sex.
- (b) One urinal is to be regarded as equal to two toilets, provided that urinals should not replace more than 25% of the total toilet facilities.
- (c) Separate toilet facilities must be provided for the staff as contemplated in the National Building Regulations.
- (d) Walls and floors of the sanitary facilities must be of an impervious material rendered to a smooth surface.
- (e) The following additional toilet and wash facilities for children under the age of 2 years must be provided –
 - (i) facilities for the hygienic handling of nappies and potties;
 - (ii) adequate containers for the storage of clean and soiled napkins;
 - (iii) ready access to a suitable washing facility;
 - (iv) suitable and adequate toilet and wash facilities for children who are not toilet trained;
 - (v) a supply of hot and cold running potable water at the wash-hand basins, or if no running water is available, a minimum of 25 litres of potable water, stored in a hygienically clean container.
- (f) Chamber pots (potties) are to be emptied, cleaned and disinfected with a disinfectant immediately after being used and stored in a suitable place when not in use.
- (g) All basins must be closely fitted to the walls at the rear of such basins which walls shall be smooth and washable.

(5) Outdoor play Area:

- (a) An outdoor play area of at least 2 m² per child must be provided.
- (b) The outdoor play area must -

- (i) comprise lawns, shady areas or other safe surfaces;
- (ii) be fenced / walled to a height of 1.8 m;
- (iii) have approved lockable or child-proof gates; and
- (iv) shall be free of excavations and dangerous steps and levels.

8. Requirements for Child Minder Facility

The certificate holder shall ensure that the premises comply with the National Building Regulations and that the following minimum accommodation and facilities are provided in respect of the child minder service:

- (a) adequate, suitable and unobstructed indoor floor area reserved for the use of the children;
- (b) suitable floor covering for the area referred to in paragraph (a) if required by, and to the satisfaction of the authorised officer;
- (c) a kitchen on the premises for the preparation of meals;
- (d) storage facilities for the personal belongings of each child;
- (e) a towel and face cloth for each child, which shall be kept or hung separately;
- (f) a plastic bucket with a close-fitting lid for each child for the storage of soiled napkins, which buckets must be marked to ensure individual use and must be stored in a bathroom or other suitable area, inaccessible to any child;
- (g) separate storage for clean napkins; and
- (h) adequate outdoor play area, comprising lawns or other safe surfaces which is fenced and has approved lockable or child-proof gates, provided that if such an area cannot be provided, the authorised officer may, at his sole discretion, approve of the substitution of an indoor area additional to that provided in terms of paragraph (a) above.

9. Equipment for children

The certificate holder shall provide equipment for the children complying with the following requirements:

- (a) chairs must be lightweight, washable and of a suitable height, without splinters or rough surfaces;
- (b) tables should be sturdy, washable and without splinters;
- (c) beds and mats for sleeping and resting purposes must in no way be dangerous to the child. Mattresses must be covered with suitable waterproof material;
- (d) sheets, waterproof sheets and blankets must be available;
- (e) sufficient, safe and adequate indoor as well as outdoor play apparatus and toys;

- (f) personal toiletries such as face cloth, toothbrush, a comb or brush and items such as soap, paper towels and toilet paper must be supplied. It should be ensured that enough soap, towels or paper towels are available at the washbasins at all times;
- (g) sufficient eating utensils must be provided;
- (h) sand pits should be covered overnight, sprinkled with coarse salt every six weeks and the sand replaced at least once a year.

10. General Requirements

- (1) All interior walls must have a durable finish that can be cleaned with relative ease.
- (2) All floors must be constructed of a smooth and impervious material that is durable and can be easily cleaned.
- (3) If carpeting is used on the floors, it must be kept clean at all times.
- (4) Any slats or rails forming part of an enclosure, security gate, play pen, bed, cot or any other object or structure whatsoever, must be a minimum of 75 mm apart, must be installed and maintained in a good state of repair, and if painted, only non-toxic paint must be used.
- (5) All windows and doors accessible to children must be constructed of safety glass.
- (6) A separate storage area must be provided for the storage of indoor and outdoor play materials, equipment, stretchers, sleeping mats, bedding and linen.
- (7) Waste bins with tightly fitted lids must be provided.
- (8) Apparatus and equipment used and any structures that may be on the premises must in no way present any danger to the children.
- (9) Provision should be made for the storage of medicines, cleaning materials and other harmful agents in such a way that it is out of the reach of children and kept separate from food.
- (10) Pets may not be kept on the premises without the prior permission of Council.
- (11) All food, eating utensils and equipment used for the preparation, handling or serving of food must be properly protected against dust, dirt, insects or any contaminating agent.
- (12) No children may have free access to living quarters of staff at any time. Adequate measures must be taken to keep the living quarters separate from the facility.
- (13) Insects and vermin must be efficiently combated.
- (14) Where a child stays in a childcare or childminder facility for longer than 4 (four) hours at a time, the person in charge of such facility must provide at least 2 (two) meals a day, which meals must be balanced and meet the child's daily nutritional requirements.
- (15) Children must at all times be under the direct supervision of an adult staff member.
- (16) Staff should be trained and skilled in First Aid and Basic Fire Fighting.

11. Ratio of Staff to number of children

- (1) The certificate holder shall ensure that the following staff-to-children ratio is adhered to at all times:

Children from birth – 18 months old

1 childcare worker for every 6 or less babies

Children from 18 months to 3 years old

1 childcare worker for every 12 or less babies

Children from 3 to 4 years old

1 childcare worker for every 20 or less children

Children from 4 to 5 years old

1 childcare worker for every 30 or less children

School going children

1 staff member for every 35 or less children

- (2) Administrative and domestic staff are not included in the ratio referred to in subsection (1).

12. Health register

- (1) The certificate holder shall maintain a health register reflecting the following details of all children attending the facility:
- (a) The child's name and date of birth.
 - (b) The name of the parents or guardian and their address and telephone number, both at home and at place of employment.
 - (c) The name and address and telephone number of each child's medical practitioner and dentist, with written authority from the parents or guardian to consult them in emergencies.
 - (d) Information concerning the child's general state of health and physical condition.
 - (e) Details of operations which each child has undergone, and any illnesses or communicable diseases from which the child has suffered and the relevant dates.
 - (f) Details of immunisations against polio, diphtheria, tetanus, whooping cough, measles, mumps, German measles and tuberculosis; and
 - (g) Details of allergies and any medical treatment the child may be undergoing.
- (2) The names of children who are allergic to certain substances or products should be posted prominently in the facility.
- (3) A proper record of any medicine that is given to a child should be kept.

13. Medical Care of Children

- (1) The certificate holder shall:
 - (a) observe all children for any signs of illness, indisposition, injury or other abnormal condition, including possible child abuse;
 - (b) keep an Incident Register of all injuries and illnesses which occurred or manifested themselves whilst the child was on the premises and keep records of injuries observed on the child which have occurred other than at the premises;
 - (c) immediately notify the parent or guardian of such illness, indisposition, injury or other abnormal condition;
 - (d) if necessary and subject to the prior consent of the parent or guardian, summon the private medical practitioner if any child is suffering or suspected to be suffering from illness or injury or in the event of the unavailability of such medical practitioner, summon a medical practitioner of the certificate holder's choice;
 - (e) immediately isolate the child suffering as contemplated in subsection (d) and devote all care necessary to the comfort and treatment of the child whilst on the premises;
 - (f) only administer medicine to a child with the written consent of that child's parents or guardian;
 - (g) in the event of a communicable disease or detection of signs of possible child-abuse, notify the authorised officer and/or the local social worker immediately;
 - (h) ensure that all children admitted to the facility have completed basic immunisation schedules, provided that if a child is too young, the certificate holder shall ensure that such immunisation be performed soon as the child is old enough;
 - (i) inform the parents or guardian immediately if head or body lice are noticed and the child or children concerned may not be allowed back into the facility before the condition is cleared up.

14. Health and Safety Measures

- (1) The certificate holder shall, in the interest of the health and safety of the children-
 - (a) take effective precautions for the protection of the children against fires, hot water installations, electrical fittings and appliances and any other object, condition or thing which may be dangerous or is likely to cause injury to any child;
 - (b) fence and completely cover any swimming or paddling pool on the premises at all times when not in use. Any children utilising the pools must do so with the parents' consent and must be under adult supervision at all times;
 - (c) ensure that all gates or doors of outdoor play areas are securely locked or otherwise closed at all times so as to prevent children from entering or leaving the confines of such areas or the premises of their own accord, and to prevent the entrance or presence of unauthorised people and domestic animals in the facility;

- (d) equip and maintain first-aid equipment, to the satisfaction of the authorised officer, and keep it readily available for use and out of reach of children;
 - (e) install fire fighting equipment on the premises in accordance with National Building Regulations SABS 0400 and submit an Emergency Procedure to the Fire Brigade Disaster Management Officer for approval;
 - (f) store medicines, corrosive and other harmful substances, including cleaning materials and alcoholic beverages, in a safe manner and in a place not accessible to the children;
 - (g) ensure that no noxious or poisonous plant or shrub grows on the premises;
 - (h) arrange for the medical examination of employees and other persons involved in the conduct of the childcare service or present on the premises when called upon by the authorised officer to do so, and shall not allow any person who is found to be suffering from, or a carrier of, a communicable disease, to remain on the premises.
- (2) The provisions of the Regulations relating to Communicable Diseases and the Notification of Notifiable Medical Conditions published under Government Notice R.2438 dated 30 October 1987, as amended, shall *mutatis mutandis* apply to the services as if it falls within the scope of the expression “teaching institution” in Regulation 1 of those Regulations and-
- (a) a breach by a certificate holder of a duty placed upon a principal in terms of the Regulations shall be deemed to be a breach of these by-laws;
 - (b) the duties placed upon and the powers vested in a medical officer of health under the Regulations shall be placed upon or vested in the authorised officer for the purposes of these by-laws.

15. Management responsibilities

- (1) The certificate holder shall ensure that-
- (a) no refuse receptacle or any other potentially harmful or hazardous object or material is stored in the outdoor play area used by the children;
 - (b) children are under adult supervision at all times;
 - (c) each child uses his/her own sleeping equipment, towel and face cloth, clearly marked and kept separately;
 - (d) prepared infant feeds are provided by the parents or guardians of babies, in bottles with covered teats;
 - (e) the facility has access to a telephone at all times;
 - (f) the premises is maintained in a clean, hygienic, safe, sound and pest-and-rodent-free condition at all times;
 - (g) staff are clean, healthy and appropriately dressed at all times;
 - (h) no person smoke or use any tobacco product in the presence of children.

16. Transport

- (1) The certificate holder shall ensure that:
 - (a) if transport is provided for the children to and from the facility, the staff is responsible for the child for the period that he/she is so transported until he/she is handed back to his/her parent or guardian or an authorized person;
 - (b) in addition to the driver, at least one other adult should be in the vehicle with the children;
 - (c) all doors are fitted with child locks and said locks are used at all times when transporting children;
 - (d) the driver remains in the driving cabin of the vehicle at all times and may not assist in the handing-over of the children;
 - (e) no children are transported in the driving cabin;
 - (f) the driver of the vehicle is in possession of a special license to transport passengers;
 - (g) babies in carrycots are not pushed in underneath the seats;
 - (h) the sitting space for each child and the room for carrycots must comply with the prescribed requirements; and
 - (i) any other prescribed legislation regulating the transportation of children is adhered to.

17. Offences and Penalties

- (1) Any person who -
 - (a) contravenes or fails to comply with any provision of these by-laws;
 - (b) contravenes or fails to comply with any notice given or condition imposed in terms of these by-laws;
 - (c) for the purpose of these by-laws, makes a false statement knowing it to be false or deliberately furnishes false or misleading information to an authorized official or officer; or
 - (d) threatens, resists, interferes with or obstructs an authorized officer or employee of Council in the performance of his/her powers, duties or functions as contemplated in these by-laws,

shall be guilty of an offence and upon conviction be liable to a fine or imprisonment for a period not exceeding twelve months or to both the fine and the imprisonment.

18. Repeal of By-laws

- (1) The by-laws Relating to Crèches and Crèches-Cum Nursery Schools of erstwhile Richards Bay Municipality and Empangeni Municipality, published under Administrator's Notice 341 of 6 July 1978, and under Provincial Notice No. 367 of 1975 respectively, are hereby repealed, provided that such repeal does not affect the continued validity of charges determined by the Council under those by-laws.

- (2) Anything done under the provisions of the by-laws repealed by subsection (1), shall be deemed to have been done under the corresponding provision of these by-laws and such repeal shall not affect the validity of any approval, authority, waiver or other act which at the commencement of these by-laws is valid under the by-laws so repealed.

19. Date of commencement

These by-laws commence on the date of publication in the KwaZulu-Natal Provincial Gazette.

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SCHEDULE FORM 1

APPLICATION FOR OPERATION OF A CHILDCARE FACILITY

To be completed by an applicant as contemplated in section 3 of this by-law.

DETAILS OF APPLICANT

FIRST NAMES

SURNAME

GENDER (tick applicable block)

MALE FEMALE

NATIONALITY

IDENTITY NUMBER (attach certified copy of ID document)

RESIDENTIAL ADDRESS

POSTAL ADDRESS

TELEPHONE NUMBER

DETAILS OF PREMISES INTENDED FOR CHILDCARE FACILITY

ADDRESS

ERF NO (attach certified copy of title deed or owner's consent)

QUALIFICATIONS

HIGHEST STANDARD PASSED

LIST ALL OTHER RELEVANT QUALIFICATIONS

HAVE YOU EVER BEEN CONVICTED OF A CRIMINAL OFFENCE YES NO
(tick applicable block)

IF YES, PROVIDE DETAILS WITH REGARD TO

OFFENCE, INCLUDING DATE OF COMMISSION

SENTENCE, INCLUDING DATE OF CONVICTION

POLICE STATION WHERE OFFENCE WAS REPORTED,
INCLUDING CASE NUMBER

MEDICAL HISTORY

DO YOU SUFFER FROM ANY CHRONIC ILLNESS FOR WHICH
YOU ARE CURRENTLY RECEIVING MEDICAL TREATMENT

YES NO

IF YES, STATE THE NATURE OF THE MEDICAL CONDITIONS
AND TREATMENT BEING ADMINISTERED AND ATTACH A
COPY OF A DOCTOR'S MEDICAL REPORT

.....
DATE

.....
SIGNATURE OF APPLICANT