

# **BED & BREAKFAST AND ACCOMMODATION ESTABLISHMENTS BYLAW**



**2023**

**BED & BREAKFAST AND ACCOMMODATION ESTABLISHMENTS BYLAW, 2023**

To provide measures for regulating and controlling the use of land for the purposes of accommodation establishments in the area of jurisdiction of the Municipality; to provide for the repeal of laws and savings; and to provide for matters connected therewith. To give guidelines in the establishment of bed and breakfast, hotels, lodges and other accommodation establishments.

**PREAMBLE**

**WHEREAS** the uMhlathuze Municipality has legislative and executive competence relating to municipal planning and land use management within its area of jurisdiction;

**WHEREAS** Section 156(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) confers on municipalities the right to administer local government matters listed in Part B of Schedule 4 and 5;

**WHEREAS** Section 156(2) of the Constitution empowers municipalities to make and administer Bylaws for the effective administration of the matters which it has the right to administer;

**WHEREAS** Section 12(3)(b) of the Municipal Systems Act (Act No. 32 of 2000) grants municipalities the right to adopt Bylaws.

**WHEREAS** National Building Regulations and Building Standards Act, 1977 (Act 103 Of 1977) regulates the standards of buildings and structures in South Africa

**WHEREAS** Tourism Grading Council of South Africa assures and improve quality and service standards in the tourism accommodation sector across South Africa

**WHEREAS** City of uMhlathuze Land Use Scheme regulates municipal consent and legal requirements and regulations that apply to land in order to achieve desirable and harmonious development of the built environment

**WHEREAS** City of uMhlathuze Outdoor Advertising Bylaw regulates legal requirements for aspects such as application procedures for signage, safety, amenity and decency, the design and construction of signs, offences and penalties, as well as the types of signs and the regulation of their display.

**NOW THEREFORE** the Municipal Council of the uMhlathuze Municipality, acting in terms of section 156 read with Schedule 4 Part B of the Constitution of the Republic of South Africa, 1996, read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes this following Bylaw:

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## CHAPTER 1

### INTERPRETATION

#### Definitions

1.1 In this Bylaw, unless the context indicates otherwise –

**"accommodation establishment"** means any premises in or upon which the business or calling of providing short term/overnight lodging, accommodation or with or without meals and whether or not for reward, is conducted, including hostels but excluding –

- (a) a home for the aged which is registered as such in terms of the Older Persons Act;
- (b) premises controlled by the Department of Correctional Services or the South African Police Services for the purposes of accommodating persons arrested, detained or convicted, as the case may be, as contemplated in the Criminal Procedure Act; and
- (c) residences/student accommodation/boarding houses

**"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) Law enforcement officers in terms of the SPLUM Bylaw
- (c) such employees, 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;

**“Bed & Breakfast”** As provided for under “home business” and subject to council’s consent means a resident owner managed commercial accommodation establishment for less than fourteen (14) lodgers in not more than seven (7) lettable rooms, and which is primarily aimed at the tourist and /or business market, operated from a private single dwelling house, where the facilities and services offered are for the exclusive use and benefit of transient overnight guests. It may include land used for sport and/ or recreation facilities associated with but secondary to the residential use of land and used exclusively by residents and guests of the facility.

**“Building control bylaw”** means building control bylaw of 2021

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

**"Consent"** Means a written authorisation, issued by the Municipal planning Approval Authority which include “consent uses” to use or develop a property for a permitted purpose or in a particular manner contemplated in the land use Scheme.

**"consent holder"** means the person who has received a written authorisation issued by the Municipal Planning Approval Authority as defined in the Scheme

**"Criminal Procedure Act"** means the Criminal Procedure Act, 1977 (Act No.51 of 1977);

**"disaster"** means a progressive or sudden, widespread or localised natural or human caused occurrence which –

causes or threatens to cause –

- I. death, injury or disease;
- II. damage to property, infrastructure or the environment; or
- III. disruption of the life of a community; and
- IV. has caused or necessitated the taking of urgent measures to accommodate people displaced by such occurrence;

**"Facilities Regulations"** means Facilities Regulations made in terms of the Occupational Health and Safety Act, published under GNR. 924 of 3 August 2004;

**“hotel”** means a facility offering transient lodging accommodation to the general public and providing additional services accessible by guests and the general public, such as restaurants, meeting rooms/conference facilities, entertainment, recreational facilities, health and beauty facilities, and limited shopping.

**“Lodge”** means a building or group of buildings under single management containing both rooms and/ or dwelling units available for temporary rental to transient individuals and may include services such as conference and recreational facilities, shop and Laundromat for the exclusive use of residents only and shall exclude a Place of Amusement.

**"Municipality"** means the uMhlathuze Municipality, a category A Municipality as contemplated in section 155(1) of the Constitution, and as established in terms of PN 343 of 2000 (KZN);

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

**"nuisance"** means –

- (a) any conduct or behaviour by any person that causes inconvenience or annoyance;
- (b) the use, keeping, producing, by-producing, harbouring of, or otherwise dealing with or in, as the case may be, any item, substance, matter, material, equipment, tool, vegetation or animal; or
- (c) the causing, creating or permitting of any situation or condition, in or on the premises, which causes or is likely to cause damage, annoyance, inconvenience or discomfort to the public or to any person, in the exercise of rights common to all or of any person;

**"Occupational Health and Safety Act"** means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

**"owner"** in respect of the premises, means the –

- (a) person in whose name the premises are registered with the Registry of Deeds;
- (b) usufructuary, if the premises are subject to a usufruct;
- (c) authorised agent, assignee, curator, executor, judicial manager, legal representative, liquidator or trustee, as the case may be, of any person contemplated in paragraphs (a) to (c)

**"premises"** means the land and the buildings used or to be used for the purpose of accommodation establishment;

**"Scheme"** shall mean the uMhlathuze Land Use Scheme and shall include any lawful

- a) amendment thereto or variation or modification thereof;
- b) prohibition, restriction and condition imposed in terms thereof;
- c) permission, approval, consent or other authority granted in terms thereof
- d) schedule, annexure or other document included therein; and
- e) any map, plan, diagram, drawing, drawing or similar document included therein

**"Self-catering accommodation"** A Self-catering property is your home away from home. It usually offers guests a sole occupancy unit consisting of one or more bedrooms or suites and a dining area with cooking facilities. Self-catering accommodation styles include Apartments, Holiday Units, Houses, Cottages, Chalets, Villas, Cabins and Air B&B's. Limited service is optional.

**"Tourism Grading Council of SA"** the entity mandated to assure and improve quality and service standards in the tourism sector across South Africa.

## 1.2 Interpretation

In the event of a conflict in interpretation between the English version of this Bylaw and a translated version, the English version prevails.

## CHAPTER 2

### PURPOSE OF THE BYLAW

#### 2. Purpose of the Bylaw

The purpose of this Bylaw is to provide norms and standards to ensure that all accommodation establishments located within the area of jurisdiction of the Municipality are managed to operate in manner that:

- (a) Gives a generic aesthetical appeal to how the accommodation establishments should be managed
- (b) Standardise the quality of service that may be expected from accommodation establishments operating within the uMhlathuze area of jurisdiction;
- (c) is not harmful to the environment, health and safety of the occupants of such facilities and the public;
- (d) does not create a nuisance;
- (e) does not violate or undermine the relevant Municipal Bylaws and the Land Use Scheme;
- (f) Creates an enabling working environment for tourism product owners, Council officials as well as other relevant stakeholders; and
- (g) Protects the tourists from false advertising where a certain quality standard was expected but not received

## CHAPTER 3

### APPLICATION

#### 3. Application of this Bylaw

- 3.1.1 This Bylaw applies within the entire area of jurisdiction of the uMhlathuze Municipality and is binding on all persons to the extent applicable.
- 3.1.2 This Bylaw does not affect or impede the applicability or enforceability of any Bylaw of the uMhlathuze Municipality or any other law in respect of –
  - (a) any premises contemplated in this Bylaw; or
  - (b) the conduct of the owner or the person in charge or of any occupant of such premises.
- 3.1.3 This Bylaw does not apply in respect of any premises used temporarily or on a one-off basis as accommodation or shelter for people during or as a result of a disaster, in terms of the Disaster Management Act.

## CHAPTER 4

### COMPLIANCE WITH MUNICIPAL LAWS AND POLICIES

#### 4. Process to follow to operate an accommodation establishment

##### 4.1 Application for Consent

6.1.1 Free Entry use is applicable to all establishments that are already zoned according to zoning based on the Land Use Scheme

6.1.2 "Consent" of the Council shall mean the granting of an application after compliance with a procedure as set out in Clauses 3.3.1 of the uMhlathuze Land Use Scheme

6.1.3 A consent use is restricted to the land use applied for and shall not be construed to be consent for all land uses listed under the relevant Land Use Control Table, as outlined in the Municipal Land Use Scheme, unless stated otherwise.

##### 4.2 Cancellation or modification of Council Consent

4.2.1 Any owner of land may inform the Council in writing to cancel or modify his or her application as set out in Clause 3.4. of the uMhlathuze Land Use Scheme.

4.2.1 The Council may render void or withdraw its consent or in writing and subsequent to the granting thereof as set out in Subsection (a) to (e) of Clause 3.4.3 of the uMhlathuze Land Use Scheme.

##### 4.3 Building Control Requirements

4.3.1. No building must without express permission of the Municipality be erected as contemplated in section 4(1) of National Building Regulations and Building Standards Act 1977, (Act No.103 of 1977) or clause 21.1(a) and the Building Control Bylaw.

4.3.2. No building should be occupied by the person(s) without obtaining the certificate of occupancy as stipulated on Section 14(1) of National Building Regulations or clause 21.3 of Building Control Bylaw

##### 4.4 Fire requirements

4.4.1 All establishments must comply with the National Building Regulations SANS 10400 part T.

4.4.2 For gas cooking installations with more than 19 Kg LPG, the gas installation must be certified as Fire compliant in respect of the Council's Flammable liquids bylaw and the SANS codes by a Fire Prevention Officer of Council.

4.4.3 The Fire Brigade Services Act, 1987 (Act No. 99 of 1987), affords The Fire Chief all rights to override all the above in the event of a fire. The Fire Chief may deem it necessary to add more requirements for the purpose of making such a facility or building safer.

#### **4.5. Traffic requirements**

4.5.1 The developer must provide all parking on site

4.5.2 Entry and exit of the site must be done in a safe manner and in forward gear to access a municipal road

4.5.3 Sight distances must be according to regulations or else traffic calming measures must be implemented.

4.5.4 No parking on the sidewalk; nor the creation of formal parking areas on the sidewalk will be allowed.

4.5.5 With the application the developer can be requested to do a Site Traffic Assessment (STA) if conditions are assessed to be unsafe or traffic movement is not clear, the developer will implement the findings of the study.

4.5.6 For provisions related to parking and loading, refer to Clause 6 and Clause 6.3 of the UMhlatuze Land Use Scheme.

#### **4.6 Outdoor Advertising requirements**

4.6.1 Each bed and breakfast establishment is allocated three (3) brown and white directional signs on Municipal Roads.

4.6.2 The specifications, locality and colour thereof is subject to consent from the relevant department within the municipality.

4.6.3 The sign may not exceed 600mm x 600mm or be higher than 3 m unless otherwise approved by the Municipality.

4.6.4 The specific approval of the relevant Department within the Municipality is required.

4.6.5 Only one sign per establishment street frontier is permitted

#### **4.7 Application for Business Licence**

4.7.1 Licensing is commonly required for Businesses dealing in foodstuffs and/or entertainment.

4.7.2 Some Businesses do not require obtaining a Business Licence, however the provisions of all applicable legislation must be complied with at all times.

4.7.3 All businesses that prepare meals for consumption on a private dwelling are exempted from obtaining a business licence.

4.7.4 The issue of a Licence shall not relieve the Licence Holder of complying with any other law or legal requirement in connection with the Business or premises concerned.

#### **4.8 Environmental Health requirements**

4.8.1 Compliance with the King Cetshwayo District Municipality's Environmental Health Bylaws.

4.8.2 If food is provided on the premises, the premises and the storage, preparation and provision of such food, must comply with the applicable provisions of the Municipality's Bylaws and must have a Certificate of Acceptability issued in terms of the Regulations Governing General Hygiene Requirements for Food Premises, the Transport of Food And Related Matters, R 638, 22 June 2018, and any other applicable law.

4.8.3 Food may not be prepared in any part of the premises other than in an approved kitchen subject to the provisions or requirements of –

- a) The Regulations Governing General Hygiene Requirements for Food Premises, the Transport of Food and Related Matters, R 638, 22 June 2018 made in terms of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

#### **4.9. Types of certificates**

##### **4.9.1 uMhlathuze Community Tourism Organisation**

The owner or the person in control of the premises is encouraged to ensure that the establishment is registered with the local Community Tourism Organisation as well as the Provincial Department of Economic Development, Tourism and Environmental Affairs

##### **4.9.2 Operations Certificate**

Once the entire requirements have been met and the relevant departments are satisfied with the establishment, a Certificate of Operation will be issued by the Tourism Section of the Municipality. This certificate will be renewable on an annual basis.

##### **4.9.3 Certificate of Acceptability**

Issued by the Environmental Health Section

##### **4.9.4 Tourism Grading Council Certificate**

Issued by the Grading Council of South Africa and should only be displayed if the establishment has been inspected and graded

#### **4.10. Display of certificates on the premises**

4.10.1 The owner or the person in charge of the premises must at all times display the original valid certificates issued in terms of this Bylaw in the office, reception or in the entrance area of the premises, in such a manner that it is clearly visible to any member of the public or authorised official upon entering such premises.

4.10.2 The owner or person in charge of the premises must ensure that the following certificates are clearly visible to any member of the public or guest upon entering the premises

- Business Licences certificate
- Certificate of Acceptability if the establishment prepares and serves food
- Registration proof with the Department of Economic Development, Tourism and Environmental Affairs
- Grading Certificate from the South African Grading Council if graded
- Membership Certificate from the uMhlathuze Community Tourism Organisation
- uMhlathuze Tourism Operations Certificate

## **CHAPTER 5**

### **Non-compliance in terms of this bylaw**

### **5.1 Compliance notice**

5.1.1 The Municipality will enforce any provision of this Bylaw by issuing a compliance notice to the owner or the person in control of the premises who has contravened any provision of the following Bylaws; requiring such person to comply with the notice in a manner and within the time specified in the notice.

5.1.2 The owner or the person in control fails or refuses to comply with such notice, the Municipality may-

- i. cause such person to be prosecuted for an offence as contemplated in section 11 of this Bylaw.

5.1.3 A compliance notice remains in force until it has been complied with and the Municipality has issued a compliance certificate stating that the Municipality is satisfied that the matter giving rise to the issue of the compliance notice has been resolved.

5.1.4 Issued by various departments depending on bylaws contravened as set out in chapter 4

### **5.2. Powers of entry and inspection**

5.2.1 An authorised official may enter the premises at any reasonable time and –

- a) serve any notice in terms of municipal Bylaws set out in chapter 4;
- b) inspect such premises in order to ensure compliance with this Bylaw;
- c) question the owner or the person in control on any information relevant to the inspection;
- d) require the owner or the person in control to produce any document which the authorised official deems necessary in order to confirm compliance with this Bylaw;
- e) take copies of any documentation or samples of any substance that is relevant to the inspection; and
- f) take one or more photographs on any part of the premises for the purposes of evidence.

5.2.2 An authorised official who removes any item other than the photocopies of any documentation as contemplated in subsection (1)(e) must –

- a) issue a receipt for it to the person in charge of the premises; and
- b) subject to the Criminal Procedure Act, return it as soon as practicable after achieving the purpose for which it was removed.

## **CHAPTER 6**

### **OFFENCES AND PENALTIES**

#### **6.1 Offences**

6.1.1 A person commits an offence if he or she –

- (a) Contravenes or fails to comply with a provision of these Municipal Bylaws or a direction issued by the Council in terms of these Bylaws, or a condition imposed under these Bylaws;
- (b) Obstructs or hinders any person in the execution of any power or the performance of any duty or function in terms of any provision of these Bylaws; or

- (c) Furnishes false, incorrect or misleading information when applying for permission from the Council in terms of a provision of these Bylaws, if found guilty of an offence is liable, on conviction, to a fine.
- (d) Failure to apply for; and produce the certificates when requested to do so

### **6.1.2 Contravention charge to prevent the continuation of an activity that constitutes an offence**

6.1.2 (a) The Municipality must impose a monthly contravention charge for as long as the establishment is in contravention with this bylaw in order to prevent or discourage the continuation of an activity that constitutes an offence contemplated in chapter 4 of this bylaw, and in accordance with the municipalities tariffs of charges . Such contravention charge shall be deemed a duty in terms of Section 118(3) of the Municipal Systems Act.

(b) The contravention charge shall be subject to escalation as set out in Council's Tariffs of charges.

(c) The contravention charge shall not be applicable to a person registered in terms of Council's Indigent Policy. Alternative enforcement processes may be applicable.

(d) In terms of Section 102 (a) of the Municipal Systems Act, the Municipality deems all separate accounts of a person liable for payment to this Municipality, to be consolidated, regardless of the fact that separate accounts for such debtor may be rendered, and includes all charges.

(e) A customer may not selectively nominate payment of his accounts or any portions of his or her account(s). Any arrear account will be dealt with in terms of Council's Credit Control and Debt Management Policy.

(f) Payment of the contravention charge does not imply that the Municipality has condoned the offence.

### **6.1.3 Reduction or disconnection or blocking of electricity and/or water services if the debtor fails to pay the said contravention charges**

6.1.3 (a) In addition to the contravention charge, as provided for in Section 18.2 of this By-law, the Municipality may reduce or disconnect electricity and/or water services to prevent the continuation of an activity that constitutes an offence contemplated Section 18.1 without a court order

(b) Disconnection and re-connection fees shall be payable in line with Council's tariffs of fees.

(c) The tourism section will retain the management/ determination of the contravention charges and advise the Finance department when a contravention charge must be charged and will handle and queries in this regard.

## **6.2 Penalties**

6.2.1 The penalties stipulated in this Bylaw do not in any way supercede or cancel any other penalty contained in other bylaws of the municipality.

6.2.2 The penalty for non-compliance relating to the certificates will be R500.00 per month for a period not exceeding twelve (12) months, and will be included in the monthly municipal account of that property, failure to honour payment during the stipulated period shall result in Council activating its debt collection policy which may result in termination of services.

## CHAPTER 7

### 7.1 Delegations

7.1.1 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 Bylaw, upon the Council, or on any of the Municipality's other office bearers, staff members, may be delegated or sub-delegated by council, or staff member, to an entity within, or a staff member employed by, the Municipality.

7.1.2 The delegation in terms of section (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the Municipal Systems Act, subject to the criteria set out in section 59(2) of said Act.

7.1.3 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.

### 7.2 Appeals

All appeals must be forwarded to the Municipal Manager within 7 days of receipt of the notice. The Municipal Manager will decide on the outcome of the appeal; which will be issued within 30 days.

### 7.3. Repeal of laws

The following Bylaw is hereby repealed:

*Bylaws for Bed and Breakfast and Guest House Facilities*

### 7.4. Short title and commencement

This Bylaw is called the uMhlathuze Municipality: Bed & Breakfast and Accommodation Establishments Bylaw and takes effect six months from the date of the 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.