

KWADUKUZA MUNICIPALITY BUSINESS LICENSE BYLAW 2024

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KWA DUKUZA MUNICIPALITY BUSINESS LICENSE BYLAW

To create a regulatory framework for the objects, powers, duties, functions, and processes of business licencing.

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CHAPTER 1

PRELIMINARY PROVISIONS

Definition

1. In this Bylaw, unless the context otherwise indicates -

“Accounting Officer” means the Municipal Manager appointed by the council in the terms of Section 56 of the Municipal Systems Act

“Applicant” means any person who has lodged an application for a business license in terms of this Bylaw;

“Application” means an application for a business license in terms of section 12;

“Authorised Licensing Official” “ALO” means a municipal employee duly delegated to perform the functions prescribed in terms of this bylaw.

“Business Licensing Registrar”, “Licensing Registrar” or “BLR” means the official appointed by the municipality to perform the functions set out in section 7;

“Business Licensing Enforcement Officer” and “Enforcement Officer” means -

- (a) an Enforcement Officer appointed by the Municipality in terms of Section 25 of this bylaw;
- (b) a police officer as referred to in the South African Police Service Act, 1995 (Act No.68 of 1995);
- (c) A traffic officer as referred to in the National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (d) any peace officer contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

“Prescribed Business” in the context of this bylaw, means a business prescribed in the Business Licensing Policy and/or Schedule 1 of the Business Act;

“Businesses Act” means the Businesses Act, 1991 (act no. 71 of 1991);

“Business License” means a business license to carry on any prescribed business activity within the area of jurisdiction of KwaDukuza Municipality and “licence” and “business licence certificate” shall have a corresponding meaning as contemplated in this bylaw and the Business Act;

“Business Registration” means the registration of a business as contemplated by this Bylaw;

“Compliance Notice” means a notice contemplated in Chapter 5 of this Bylaw.

“District Municipality” means the iLembe District Municipality

"Financial Interest" means a -

- (a) right or entitlement to share in profits or revenue;
- (b) real right in respect of property of a company, corporation or business;
- (c) real or personal right in property used by a company, corporation or business;
- or
- (d) direct or indirect interest in the voting shares, or voting rights attached to shares, of a company or an interest in a close corporation;

"Foodstuff" means foodstuff as defined in section 1 of the foodstuffs, cosmetics and disinfectants act, 1972 (act no. 54 of 1972);

"Gazette" means the official provincial gazette of KwaZulu-Natal;

"Illegal Foreigner" means a foreigner who is in the republic in contravention of the Immigration Act 13 of 2002 or Refugees Act 130 of 1998.

"illegal goods" means -

- (a) goods which may not lawfully be sold or bought including, but not limited to, counterfeit goods as defined in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997);
- (b) goods that are bought or sold in an unlawful manner; or
- (c) goods that have been acquired in an unlawful manner.

"Informal Business" means informal business as defined in the Informal Business bylaw;

"Informal Business Bylaw" means the KwaDukuza Informal Business Bylaw;

"Licensed Business" means any business, person or body licensed in terms chapter 1 of this Bylaw and **"licensed person"** or **"license holder"** has a corresponding meaning;

"Minor" a person under the age 18 years of age as per the Childrens Act No. 38 of 2005.

"The Municipality" means the KwaDukuza local municipality.

"Municipal Council" or **"Council"** means a municipal council referred to in section 157(1) of the Constitution.

"Objector" means any person who has lodged an objection against an application for a business license in terms of section 13;

"Policy" means the Business Licensing Policy;

"Prospective Holder" means any person for the benefit of whom an application contemplated in this Bylaw has been made;

“Special Event” means an event so designated by the Municipality including certain sports and music festivals/events, temporary markets or any other periodic event determined by the Municipality.

“Written Notice” means any communication which is reduced to writing in any format which can be printed out and retained as a record.

Application and interpretation of Bylaw

2. (1) In terms of Section 2(1)(a) of the Business Act, 1991 (Act No. 71 of 1991) and Section 2 of the Regulations published on the 12 July 2018, in the KwaZulu Natal Provincial Gazette under Notice No. 1972 of 2018, the KwaDukuza Municipality has been appointed as a Licensing Authority in its area of jurisdiction and authorised to undertake the licensing of businesses subject to the provisions of the Businesses Act, No 71 of 1991. This Bylaw applies to any person or entity carrying on, or intending to carry on, any prescribed business in the municipality. Where this bylaw conflicts with national or provincial policy or legislation, then the national or provincial policy/legislation will take precedence.

Objects of the Bylaw

3. (1) The objects of this bylaw are to -
- (a) ensure that all persons, bodies and entities conducting prescribed businesses within the jurisdiction of the municipality -
 - i. possess the necessary business licences issued in terms of this Bylaw; and
 - ii. are added to the register in terms of this Bylaw;
 - (b) ensure that all businesses and persons licensed, permitted and registered in terms of this Bylaw -
 - iii. are conducted or conduct themselves in a manner that promotes the integrity of the business industry; and
 - iv. do not cause harm to the public;
 - (c) ensure the participation of historically disadvantaged individuals in the prescribed businesses within the economy.

Principles, Norms and Standards and Policies

4. (1) Any development principles and any norms and standards applicable to Business Licenses made in terms of national or provincial legislation apply to the Municipality.
- (2) The Municipal Council may adopt policies not inconsistent with national legislation, provincial legislation or this Bylaw to guide applications or decision making in terms of this Bylaw.
- (3) If the Municipal Council intends to adopt or amend a policy that may materially and adversely affect the rights of any individual or the public, the Municipality must follow a participation process and procedure which meets the requirements of the Municipal Systems Act.

CHAPTER 2 INSTITUTIONAL

Powers, duties and functions of The Municipality

5. (1) The Municipality, in respect of its area of jurisdiction, must -
- (a) receive, consider and process all business license applications; and
 - (b) refuse or grant applications contemplated in paragraph (a);
 - (c) refuse or grant any application for the transfer of any business license;
 - (d) withdraw or suspend a business license in appropriate circumstances without a court order;
 - (e) register all prescribed businesses operating within its area of jurisdiction; and
 - (f) exercise and perform such other powers, duties and functions assigned to them by any other legislation or this Bylaw.
- (2) The Municipality, in exercising and performing its powers, duties and functions in terms of sub-section (5)(1)(a) -
- (a) must determine -
 - i. any conditions or restrictions to be attached to any business licence;
 - ii. the scope of the business licence; and
 - iii. trading hours;
 - (b) may amend, substitute or rescind any -
 - i. conditions or restrictions;
 - ii. scope or trading hours, contemplated in paragraph 5(2)(a) of this Bylaw;
 - (c) must in terms of the prescribed criteria contemplated in section 20 of this bylaw, suspend or withdraw for an indefinite period of time or for such a period as it may determine-
 - i. any business licence; or
 - ii. any right or privilege attached to any business licence;
 - (d) may, where there has been a breach of any condition attached to the business licence withdraw or suspend the business licence;
 - (e) may cause any business to cease operations until such time as the Municipality is satisfied that the business has met all minimum requirements as stipulated in the licence;
 - (f) may engage an enforcement officer to undertake any investigation to determine the suitability of-
 - i. an applicant in respect of a business licence; or
 - ii. business premises in respect of any business licence application;
 - (g) may institute any legal proceedings against -
 - i. any licenced person; or
 - ii. any other person, in respect of any contravention of any provision of this Bylaw;
 - (h) may impose any fine against any person found to have contravened any provisions of this Bylaw;
 - (i) may declare the property from which a business operates as non-compliant and illegal and impose/implement the relevant rate category for illegal and unauthorised use.

- (j) take such other lawful steps to ensure compliance with the provisions of this Bylaw.
- (3) The Municipality, must -
 - (a) in exercising and performing its powers, duties and functions, implement and monitor the implementation of all applicable laws;
 - (b) exercise and perform any other powers conferred on it by this Bylaw;
 - (c) in appointing an authorised licensing official, follow such procedures and processes; and
 - (d) generally, take such other steps and perform such other acts as may be reasonably necessary for, or conducive to, the achievement of the objects of this Bylaw.

Designation of the Authorised Licensing Official (“ALO”)

6. (1) The Accounting Officer shall designate an authorised licensing official/s who shall make the final decision on any matter relating to business licensing.

Designation of the Business Licensing Registrar (“BLR”)

7. (1) The Accounting Officer shall designate an official/s as a BLR.

Powers, duties and functions of The Business Licensing Registrar

8. (1) The BLR must -
- (a) provide the necessary administrative support services, including pre-assessment of any matter to the Municipality and the Authorised Licensing Official, in order to enable them to perform and discharge their powers, duties and functions in terms of this bylaw;
 - (b) provide the necessary administrative support services to the Applicant to enable them to submit an Application;
 - (c) To create public awareness of business license procedures and precepts.
- (2) In respect of any application for a business license, the BLR must-
- (a) after an application for a license has been granted by the ALO, issue a license in the prescribed form;
 - (b) keep and maintain, in proper order, a register of all the decisions of the ALO; and
 - (c) communicate the decisions of the ALO to applicants and other affected parties.
- (3) The BLR must oversee the registration of all businesses on the Business Licensing and information management system.
- (4) the BLR may simultaneously hold the office of Enforcement Officer.
9. Expert and other assistance to the ALO
- (2) (1) The Municipality may appoint such experts or other persons as service providers to assist the ALO in the exercise and performance of their powers, duties and functions.

(3) The experts or other persons appointed under subsection (1) may attend meetings with the ALO.

CHAPTER 3

BUSINESS LICENCE

Business Licences

10. (1) No person will carry on a Prescribed Business in the municipality without holding a valid and subsisting license for the business carried on except for those businesses specifically exempted in this Bylaw.
- (2) Where a business is carried on in or from more than one premises in the municipality, the business carried on in, or from, each premises is deemed to be a separate business.
- (3) The Municipality may exempt the following prescribed businesses from requiring a business license:
- (a) Businesses listed in Schedule 2 of the Business Act.
 - (b) A business which is carried on by the State or a Local Authority.
 - (c) Non-Profit Organizations
 - (d) Informal Businesses which are regulated by the Informal Business Bylaw
 - (e) Home Businesses as defined in the Scheme
- (4) An exemption for a business license does not exempt a business owner from compliance with any other applicable legislation such as the requirement for a certificate of acceptability (COA) where food/consumables are being handled.

Part one: Applications

Applications

11. (1) Any person who wishes to apply for a business licence must lodge an application -
- (a) Online or at the offices of the BLR or any designated place within the Municipality;
 - (b) in the prescribed manner and form; and
 - (c) make payment of the non-refundable application fee.

(2) The application contemplated in subsection (1) must be accompanied by the following documentation and information, where applicable, which must to be submitted together with the prescribed form in order for a Business Licence application to be considered:

- (a) Company Registration or CIPC documentation;
- (b) Company or Close Corporation Resolution;
- (c) Certified ID or Passport of Directors, Members or Partners;
- (d) Lease agreement or Title Deed;
- (e) Occupancy Certificate and / or approved building plans, unless the building is specifically exempted in terms of the pre-scheme planning policy;
- (f) Any previous Business Licence Applications, whether expired, approved or referred.
- (g) Permit in terms of the Immigration Act (Non-South African Residents)
- (h) Business Visa (Non-South African Residents)
- (i) Section 22 Permit for refugees or asylum seeker in terms of the Refugees Act (Non-South African Residents)
- (j) Any other information as the Municipality may designate as reasonably required based on the nature of the specific business being applied for.
- (k) The documentation in respect of applications of a Business Licence for properties exempted in terms of the KwaDukuza LUMS Transitional Measures Policy (April 2017), as mentioned above, requires the following additional documentation to be submitted:
 - i. Affidavits confirming compliance with KwaDukuza LUMS Transitional Measures Policy (April 2017)
 - ii. Indemnity form indemnifying Municipality from liability for use of the business premises
 - iii. Floor and / or Tenants Layout Plan
 - iv. Letter from Municipality seeking permission to use Municipal Land where applicable
 - v. Ward Councillor Letter confirming the business premises was established before 29 March 2017

(3) A BLR must, within 7 days of receipt of the application submitted in terms of subsection (1) -

- (l) acknowledge receipt of the application in writing; and
- (m) examine the application in order to determine whether it is complete, and where the application is not complete, issue a notice in the prescribed form calling on the

(n) applicant to supplement or remedy the incomplete application, within 21 days of dispatch of the notice,

(4) Where an Applicant does not supplement or remedy an incomplete application in 21-day timeframe, the application shall be deemed to have been abandoned.

Part Two: Consideration, communication, and issuing of Licence.

Consideration of applications by the ALO

12. (1) In making a decision on a Business License Application, the ALO must consider -
- (a) all the documents and representations submitted by the applicant;
 - (b) any documentation and representations received from any objector;
 - (c) all the reports submitted;
 - (d) the suitability of the premises for the proposed business in relation to input and information from -
 - i. Environmental Health from iLembe District Municipality:
 - Issuing of Certificate of Acceptability
 - Conducting inspections
 - ii. the Municipality's Town Planning:
 - Compliance in terms of the Land Use Management Scheme and the relevant Zoning where applicable
 - Conducting inspections
 - iii. Building Control
 - Compliance with National Building Regulations (Certificate of Occupation and approved building plans where applicable)
 - Structural integrity of business premises
 - Compliance with outdoor advertising bylaw
 - iv. Fire Services
 - Compliance with the Occupational Health and Safety Act, National Building Regulations and other regulations relating to fire
 - Conducting inspections
 - v. Any other business unit as and when required by the KwaDukuza Business Licensing Authorized Official.
 - (e) whether the application is contrary to the provisions of this Bylaw or any other law;
 - (f) whether the application contributes to the objects of the Bylaw
 - (g) any matter of public interest.
- (2) The ALO shall consider a Business License Application referred to him or her within 14 days from date of referral from the BLR
- (3) The ALO may on notice to the Applicant, through the BLR, extend the period of consideration for an additional 21 days with reasons.
- (4) An ALO may, if it is considered necessary and subject to the timeframe contemplated in subsection (2) and (3) -
- (a) Direct an Enforcement Officer to carry out an inspection of the premises;
 - (b) call upon the services of experts or service providers to undertake such further investigations necessary to assist in the consideration of the application.
- (5) After having considered an application, an ALO must either -
- (a) grant the application subject to -
 - i. such terms and conditions it may deem fit;

- ii. such trading hours it may deem to be necessary;
- (b) refer the application back to the Applicant for additional information or corrections and follow the process referred to in section 11(4);
- (c) refuse the application.

Communication of the decision

13. (1) A BLR must, within 3 days of an ALO having made a decision on the application in terms of section 12, communicate the decision in writing to the Applicant.
- (2) In the event that an application is refused, any decision must include -
- (a) written reasons for the decision;
 - (b) advise on the right to appeal or review the decision of the ALO.

Issuing of business licences

14. (1) If an application is granted, the BLR must within 3 days of communication of the decision, issue a business license to the applicant in the prescribed form, which must include-
- (a) a license number;
 - (b) the date of issue;
 - (c) the physical location of premises in respect of which a licence has been granted;
 - (d) the registered name of the entity and trading name;
 - (e) the terms and conditions upon which the licence has been granted, including the trading days and/or trading hours; and
 - (f) the date for the renewal of the licence;
- (3) A licenced business must -
- (a) display a certified copy of the licence at the premises;
 - (b) display visible signage at the main entrance indicating the trading name of the licenced business

Part Three: Validity, Renewal, Transfer, Management, Relocation, and Cancellation of Licence

Validity of licence

15. (1) Any licence issued in terms of this bylaw is valid for a period of two years or such lesser period of time as stipulated in the conditions of the license.
- (2) The licence takes effect on the date on which the business licence is issued and remains in effect until -
- (a) the licence is cancelled in terms of this bylaw;
 - (b) has lapsed or been withdrawn; or
 - (c) a licenced person/entity is disqualified in terms of this bylaw.

Renewal of business licence or permit

16. (1) Any licenced or permitted entity must Submit a renewal application at least 60 days prior to the expiry of the term of the licence in the prescribed form,
- (2) The documentation in respect of the renewal of a Business License shall be as per Section twelve (12) above, save that in respect of the first renewal no inspection shall be required but the renewal shall be subject to prescribed compliance reports by KwaDukuza Municipality Building Control, iLembe Health, and KwaDukuza Fire.
- (3) Subsequent renewals shall require resubmission of the application form and documentation listed in Section twelve (12) above.

Transfer of licence

17. (1) The Municipality may consider the approval of the transfer of a license in appropriate circumstances on condition that where a business license is transferred:
- (a) to a new owner, such transfer period will only be for the remaining period of the existing Business License;
 - (b) If the activity of the business remains the same as per the original application;
 - (c) due to the premises changing.
- (2) Any licenced person who intends to transfer his or her licence to another person, must submit an application to the Municipality in the prescribed form.
- (3) The prospective holder of a licence to whom the licence or permit is to be transferred in terms of subsection (1) must not be disqualified in terms of this Bylaw.
- (4) Where the Municipality has granted the application for the transfer of a licence and the licenced person has paid the prescribed transfer fee, a certificate of transfer must be issued -
- (a) reflecting the name of the prospective holder; and
 - (b) such conditions as may be imposed by the Municipality .

Management of Businesses

18. (1) A licenced or permitted person may appoint any natural person as a manager of the licenced business.
- (2) The manager contemplated in subsection (1) must -
- (c) be in possession of a manager's permit issued in terms of subsection (3); and
 - (d) not be disqualified in terms of any the provisions of this Bylaw;
- (3) Any licenced person wishing to appoint a manager for any licenced business must submit an application for the manager's permit to the Municipality in the prescribed form.
- (4) Manager's permit/s may be included as part of a Business Licence.
- (5) If the application contemplated in subsection (3) has been granted, the ALO must, upon payment of the prescribed manager's permit fee, issue the manager's permit.

Relocation of business operations to other premises

19. (1) Any licenced person who intends to relocate from a licenced premise to other premises, must submit an application to the Municipality in the prescribed form.
- (2) The application for the removal of a business licence to other premises must be processed in terms of the provisions of this Bylaw.
- (3) The ALO must issue a certificate of relocation, as prescribed after -
- (a) it has granted the application for the relocation of a licence; and
 - (b) the licenced person has paid the prescribed relocation fee.
- (4) The certificate of relocation must -
- (a) reflect the name of the prospective holder; and
 - (b) contain conditions as may be imposed by the Municipality

Cancellation of licence

20. (1) The ALO may, subject to subsection (2), cancel the licence if the licence holder-
- (a) has violated -
 - iii. any of the conditions attached to the licence; and
 - iv. any provisions of this Bylaw, any other applicable law or bylaw;
 - (b) becomes disqualified in terms of the provisions of this bylaw;
 - (c) underlying licenses and/or approvals and/or certificates giving rise to the business license have been withdrawn; or
 - (d) has ceased to trade.
- (2) Prior to an ALO cancelling the licence in terms of subsection (1), the ALO must, in the manner prescribed, afford the licenced person, an opportunity to be heard and to make representations as to why the licence should not be cancelled.
- (3) A licenced person may, in the manner prescribed, surrender his or her licence.

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- (4) The Municipality must prescribe the manner in which the licence held by a person who-
- (e) is deceased;
 - (f) has been sequestrated or placed in liquidation;
 - (g) is under judicial management; or
 - (h) has been declared by court to be incapable of handling his or her own affairs, must be dealt with.
- (5) Once a licence has been cancelled in terms of subsections (1) or (3), all rights, benefits and allowances accruing thereto lapse immediately.
- (6) A business license shall be invalid where a business license holder;
- (a) was issued a business license fraudulently or based on fraudulent information;
 - (b) was issued a business license in error;
 - (c) changes the location of the business premises;
 - (d) substantially changes the layout of the business premises;
 - (e) changes the nature of the business.

Part Four: Application and Renewal Fees

Application and Renewal Fees

21. (1) The Municipality in a prescribed manner and by notice in the Gazette, shall determine the standard tariffs that must be applicable for business licences in terms of this By Law for -
- (a) application fees;
 - (b) renewal fees;
 - (c) transfer fees;
 - (d) relocation fees; and
 - (e) manager's permit fees.
- (2) The Municipality may, by notice in the Gazette determine the framework for the determination of tariffs based on the size and location of the business.
- (3) The Municipality must, by notice in the Gazette and from time to time revise and publish in the Gazette the tariffs contemplated in these Bylaws.

CHAPTER 4

RESTRICTIONS AND DISQUALIFICATIONS ON BUSINESS LICENSES

Compulsory licencing, prohibitions and restrictions

22. (1) No person or business may conduct any prescribed business in any area within the municipality unless -
- (a) that person is a holder of a business licence issued to him or her in terms of this Bylaw; or
 - (b) It is a business which has been exempted in terms of any applicable legislation.
- (2) No person or business may -
- (a) employ or offer employment to any person to manage any business activity, if such a person is subject to a disqualification referred to in this Bylaw;
 - (b) sell products or provide services which are in contravention with this bylaw or any other legislation.
- (3) Any person or business who -
- (a) contravenes subsections (1) or (2);
 - (b) conducts any business using a business licence issued to another person;
 - (c) lets or allows any person to conduct business using a business licence issued to another licenced person; or
 - (d) employs any person as a business manager if such person does not possess a manager's permit as contemplated in this Bylaw;
- is guilty of an offence.

Restricted Conduct: Alcohol

23. (1) A business may not—
- (a) sell or promote alcoholic products unless in possession of a valid liquor licence from the liquor board;
 - (b) sell alcoholic products to a minor as prescribed in this Bylaw, Children's Act, and the Liquor Act.
- (2) A business must comply with the conditions and provisions set out in the Liquor Act, Act 59 of 2003 and KZN liquor Act, 6 of 2010.

Restricted Conduct: Tobacco, Tobacco-related Products, and Vaping or Electronic Delivery System Products

24. (1) A business may not—
- (a) sell or promote tobacco, tobacco-related products and vaping or electronic delivery system products to a minor as prescribed in this Bylaw, Children's Act, and the Tobacco Products Control Amendment Act;
 - (b) allow minors in his or her employ or under his or her control, to sell or offer to sell any tobacco, tobacco-related products and vaping or electronic delivery system products on the business premises;
 - (c) Sell or promote tobacco, tobacco-related products and vaping or electronic delivery system products any place where a person under the age of 18 years receives education or training;

- (d) Sell tobacco, tobacco-related products and vaping or electronic delivery system products in vending machines in locations which are accessible to persons under the age of sixteen years old.
- (2) A business must comply with the conditions and provisions set out in the Tobacco Products Control Amendment Act, Act No. 63 of 2008.

Restricted Conduct: Gaming and Gambling Services

25. (1) A business may not—
- (a) promote gaming or gambling services or activities unless in possession of a valid licence from the relevant gambling authority;
 - (b) provide gaming or gambling services or activities to a minor as prescribed in this Bylaw, the Children's Act, and the National Gambling Act and KZN Gaming and Betting Act.
- (2) A business must comply with the conditions and provisions set out in the National Gambling Act, Act No. 7 of 2004 and the KZN Gaming and Betting Act, 8 of 2010.

Disqualifications

26. (1) No person may make an application for a business license if he or she -
- (a) is an illegal foreigner, undesirable person and/or prohibited person as defined in the Immigration Act, Refugees Act or any other legislation;
 - (b) is a minor who does not have the consent of a legal guardian or who is not an emancipated minor;
 - (c) is under curatorship;
 - (d) is or has been declared by a competent court to be of unsound mind;
 - (e) has had his or her business licence cancelled in terms of this Bylaw, dependent on that disqualification ending -
 - (f) **after three years of the date of cancellation of the licence; or**
 - (g) **on such other date determined by the Municipality ; or**
 - (h) has been convicted of an offence in terms of this Bylaw, subject to that disqualification ending after three months of the date of conviction;
 - (i) has been found guilty of an offence or has a judgement noted in terms of the Customs and Excise Act No. 91 of 1964;
 - (j) has been found guilty of any offence under the Counterfeit Goods Act No. 37 of 1997; or
 - (k) Fails to comply with any of the provisions of this bylaw.
- (2) No company, close corporation, association, partnership or trust may apply for a business license, if a person who is disqualified in terms of subsection (1) -
- (a) has a controlling interest in that company, close corporation, association or trust;
 - (b) is a partner in that partnership; or
 - (c) is the main beneficiary in that trust.

Special Events

-
27. (1) The Municipality may, on reasonable notice, prohibit or restrict business for the duration of a special event and within a prescribed area, notwithstanding the provisions of any business policy or any business licence.
- (2) No compensation is payable by the Municipality to any business as a result of the prohibition or restriction of business as contemplated in subsection (1).
- (3) The Municipality will determine whether an event shall be determined as a special event;
- (4) The Municipality may approve a special event subject to reasonable conditions.

CHAPTER FIVE

INSPECTIONS, ENFORCEMENT OFFICERS AND COMPLIANCE

Appointment of Enforcement Officer

28. (1) The municipality must appoint a person or persons as Enforcement Officers to perform the powers, duties and functions contemplated below
- (2) The Municipality must issue every Enforcement Officer appointed in terms of subsection (1) with an identification card.
- (3) The identification card issued in terms of subsection (2) is sufficient evidence of the authority of the Enforcement Officer named on it.
- (4) When an Enforcement Officer exercises or performs any of his or her powers, duties and functions in terms of this Bylaw, he or she must -
- (d) be in possession of the form of identification issued to that Enforcement Officer in terms of this section; and must
 - (e) show the form of identification so issued to any person who -
 - v. is affected by the Enforcement Officer's actions in terms of this Bylaw; and
 - vi. requests to see identification.
- (5) The Enforcement Officers contemplated in this section must be appointed as peace officers in terms of section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Powers, duties and functions of Enforcement Officers

29. (1) An Enforcement Officer may enter any premises if he or she has a reasonable suspicion that any business is being conducted on such premises and request the owner of the business or manager or employee of the business to produce a business licence;
- (2) An Enforcement Officer may conduct an inspection and compile a report in respect of any-
- (a) licenced or permitted premises to monitor and enforce compliance, with this By Law or any other law; and
 - (b) Subject to provisions of this Bylaw and the provisions of any other law, an Enforcement Officer may without a court order -
 - i. question any person present on any premises in respect of any matter which may be relevant to the inspection;
 - ii. question any person whom, the Enforcement Officer on reasonable grounds, believes may have information relevant to the inspection;
 - iii. inspect any document that a person is required to keep in terms of this Bylaw or any law or that may be relevant to any business-related inspection;
 - iv. copy a document, or if necessary, remove the document in order to copy it;

- v. take photographs or make audio-visual recordings of anything or any person, process, action or condition on or regarding any land or premises;
- vi. with the assistance of a police officer from the South African Police Services, seize and remove any item which in his or her opinion may furnish proof of a contravention of any provision of this Bylaw or any other law;
- vii. do all things necessary for conducting the inspection without exceeding his other powers as contemplated in this Bylaw and
- viii. order the immediate closure of business operations if the Enforcement Officer, according to the powers vested in him or her as contemplated in this Bylaw, can on reasonable grounds demonstrate that the business concerned is -
 - in breach of its business licence or trading permit;
 - trading illegally;
 - trading without a licence or permit;
 - posing a danger to the interests of the health and safety of the public; or
 - a repeat offender, where all other reasonable alternative measures to prevent the business from contravening the provisions of this Bylaw and any other law, have been exhausted.

(3) An Enforcement Officer who removes anything from a premises being inspected, must issue a receipt to the owner or person in charge of the business.

(4) Before commencing an inspection on any premises in terms of this section, an Enforcement Officer must identify himself or herself, explain his or her authority, and furnish proof of his or her appointment to the person apparently in control of the premises or the person who gave permission to enter.

Use of force

30. (1) An Enforcement Officer carrying out his/her duties in terms of this Bylaw, may overcome any resistance to entry or inspection by using the force that is reasonably required, including breaking a lock, door or window of the premises to be entered.

(2) Before using force, the person carrying out the action must audibly demand admission and must announce his or her purpose, unless he or she reasonably believes that doing so may cause someone to destroy, dispose of, or tamper with, any object, document or evidence that is the subject of the inspection.

(3) Force may not be used to effect an entry or conduct any routine inspection in terms of section 29 except in the case of an emergency or subject to any other law.

Compliance notices

31. (1) Where an Enforcement Officer is of the opinion that a licenced person or business has breached the terms and conditions of a licence or has failed to comply with the provisions of this Bylaw, the Enforcement Officer may issue and serve upon that

licenced person or any person in control of licenced premises, a compliance notice in the prescribed form.

(2) A compliance notice must stipulate the -

- (a) provisions of this Bylaw or the conditions of the business licence which must be complied with;
- (b) nature and extent of the non-compliance;
- (c) measures which must be taken to comply;
- (d) date by which compliance must be completed; and
- (e) possible consequences of non-compliance, which may include cancellation of the licence.

(3) A compliance notice remains in force until the date for compliance or any extension thereof has expired or the issue by the Enforcement Officer of a certificate of compliance, whichever is the earlier.

(4) An Enforcement Officer may, at the request of the person served with the compliance notice, extend the period of compliance, upon good cause shown, by issuing an amended compliance notice.

(5) If the person served with the compliance notice has complied therewith, the Enforcement Officer must issue a certificate of compliance.

(6) The ALO may set aside the complaint as set out in the compliance notice if it decides that the complaint is unjustified.

(7) If the ALO finds the complaint to be justified, it may order that the compliance notice be complied with by such date as it may determine.

(8) An Enforcement Officer must, after the period stipulated for compliance, submit a report on compliance to the ALO.

(9) If the order referred to in subsection (7) has -

- (a) been complied with, the Enforcement Officer must issue a certificate of compliance; or
- (b) not been complied with, the ALO may forthwith cancel the licence.

(10) In the event that the licenced person who is served with the compliance notice has failed to comply with the notice, the Enforcement Officer must submit the compliance notice and all relevant documentation to the ALO for consideration.

(11) The Licensing Registrar must inform the licence holder in writing of the cancellation of the licence and provide reasons for such cancellation.

(12) Any person who fails to comply with a compliance notice is guilty of an offence.

Code of conduct for Enforcement Officers

32. (1) The conduct of Enforcement Officers contemplated in this Bylaw shall be issued by the Municipality. The Code of Conduct as set out in Schedule 2 of the Local Government Municipal Systems Act No 32 of 2000 shall be the basic code of conduct for Business Licence Enforcement Officers.

CHAPTER SIX

APPEALS, OFFENCES AND PENALTIES

Appeals

33. (1) A person whose rights are affected by a decision taken by the Municipality in terms of this Bylaw may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)

Offences and penalties

34. (1) Any person who is guilty of an offence in terms of this Bylaw shall be liable on conviction to -
- (a) a fine, as specified in the Council Tariff of Charges
 - (b) imprisonment not exceeding three months; or
 - (c) both such fine and imprisonment.
- (2) Any person operating -
- (a) a nightclub or discothèque;
 - (b) adult premises contemplated to in section 24 of the Films and Publications Act, 1996 (Act No. 65 of 1996); or
 - (c) an escort service;
- who allows any person younger than the age of 18 years to enter the premises, is -
- i. guilty of an offence; and
 - ii. liable to a fine or imprisonment not exceeding 3 years.

CHAPTER SEVEN

KEEPING OF RECORDS AND ACCESS TO INFORMATION

Record of a Registration for a Business Licence

35. (1) The Municipality must keep a register of all applications for Approval.

(2) The Municipality must keep copies of all documents to which the public has a right of access.

Recording of Prescribed Businesses

36. (1) The Municipality must, in respect of its area of jurisdiction, register every business, body or entity conducting a Prescribed Business in its Business Licencing, and information management system.

(2) Businesses which are regulated by industry specific codes or industry specific registration must comply with their industry codes and submit proof of registration of their business sector when applying for business license.

(3) The main objectives of the registration of businesses contemplated in subsection (1) are to ensure the collection of -

- (a) economic data in respect of all businesses and informal business persons in the municipal jurisdiction ;and
- (b) proper economic and spatial planning.

CHAPTER EIGHT

MISCELLANEOUS PROVISIONS

Calculation of number of days

37. (1) If this Bylaw prescribes a period for performing an action, the number of days must be calculated by excluding the first day, and by including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the first work day immediately following the Saturday, Sunday or public must be regarded as the last day of the period.
- (2) Days that a Municipality is officially in recess must be excluded from the period in which a Municipality must perform an action in terms of this Bylaw, if -
- (a) a Municipality did not delegate the power to perform the action; and
 - (b) the action must be performed in 120 days or less.

Transitional Arrangements and Savings

38. (1) Notwithstanding the enactment of this Bylaw—
- (a) where a business had been issued with a license or permit prior to the enactment of this Bylaw, such license or permit shall remain valid for the approved period contained in the license.

Short Title and Commencement

39. (1) This Bylaw is called the KwaDukuza Municipality : Business License Bylaw, 2023 and takes effect on the date on which it is published in the *Provincial Gazette* of KwaZulu-Natal.

Repeal of Previous Laws and Bylaws

40. (1) The laws mentioned in the Schedule to this Bylaw are hereby repealed to the extent set out.
- (2) All permits issued under any other law or formal process relating to informal business prior to the commencement of this bylaw remain in full force until repealed.
- (3) Any rights accrued or obligations incurred as contemplated in the laws referred to in above remain in force, as if those laws have not been repealed.

SCHEDULES

Schedule 1: Repeal of Laws