

Winnie Madikizela-Mandela, South Africa

Childcare Services By-law, 2017

Legislation as at 24 April 2017

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Childcare Services By-law, 2017
Contents

1. Definitions 1

2. Application of by-laws 2

3. Registration of childcare facilities and childminder facilities 2

4. Cancellation of registration 3

5. Termination of service 4

6. Right of entry and inspection of premises and records 4

7. Requirements for childcare facility 4

8. Requirements for child minder facility 6

9. Equipment for children 6

10. General requirements 7

11. Ratio of staff to number of children 7

12. Health register 8

13. Medical care of children 8

14. Health and safety measures 9

15. Management responsibilities 9

16. Transport 10

17. Offences and penalties 10

18. Repeal of by-laws 11

19. Date of commencement 11

Winnie Madikizela-Mandela South Africa

Childcare Services By-law, 2017

Published in Eastern Cape Provincial Gazette 3830 on 24 April 2017

Commenced on 24 April 2017

[This is the version of this document from 24 April 2017.]

[This by-law should likely have been repealed by section 35 of the [Child Care Facilities By-law, 2019](#). However, that section refers (probably erroneously) only to the repeal of street trading by-laws, rather than child care by-laws.]

The Municipal Manager hereby publishes, in terms of Section 13 of the Local Government Municipal Systems Act, 2000 ([Act 32 of 2000](#)) read with Section 162 of the [Constitution of the Republic of South Africa Act 1996 \(Act 108 of 1996\)](#) the By-Law relating to Childcare Services, which by-law shall come into operation on the date of publication thereof.

1. Definitions

In the interpretation of these by-laws, words in the masculine gender include the feminine, the singular includes the plural and vice versa and the following words and expressions shall have the meanings respectively assigned to them hereunder, unless such meanings are repugnant to or inconsistent with the context in which they occur:-

"**authorised official**" means an official of the Council or the official of another municipality or another organ of state with which the Council has concluded an agreement for the rendering of services in terms of these by-laws and to whom the Council has delegated a duty, function or power under these by-laws,

"**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 Health Act, 1977 ([Act No 63 of 1977](#));

"**Council**" means the Council of the Municipality or any Committee, Political Office Bearer or official thereof acting by virtue of any power entrusted or delegated to it or him in terms of legislation with regard to the application and implementation of these by-laws;

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

"**Health Act**" means the Health Act, 1977 (No. 63 of 1977);

"**Municipality**" means the Municipality of Mbizana and includes the Council thereof;

"**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 subdivided 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. Application of by-laws

- 2.1 These by-laws shall apply to all childcare services and childminder services within the jurisdiction of the municipality.
- 2.2 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 such service is in possession of a valid certificate issued in terms of that section.
- 2.3 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 application is refused, he shall, if he continues to conduct such service after such period or after refusal of his application, be deemed to have contravened section 2(2) of these by-laws.
- 2.4 A person whose service has been registered in terms of Section 3 of these bylaws 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

- 3.1 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 shall accompany the application.
- 3.2 The Council may, before or during the consideration of the application, request such further information relating to the application as it deems necessary.
- 3.3 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.
- 3.4 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 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.
- 3.5 The Council may approve an application and register the facility if it is satisfied that the premises comply with:-
 - (a) the National Building Regulations;

- (b) the Health Act;
 - (c) the Council's Town Planning Scheme or 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 bylaws;
 - (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.
- 3.6 When approving an application for registration, the Council may impose such further conditions and restrictions as it deems fit.
- 3.7 Once an 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 sub-section
 - (d) states the period for which the premises will be so registered.
- 3.8 Neither registration nor the certificate is transferable to any other person, heir or successor-in-title to the certificate holder.
- 3.9 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.
- 3.10 A certificate holder shall, at least 30 days before expiry of the period referred to in sub-section (7) (d), re-submit an application for registration in terms of this section.

4. Cancellation of registration

- 4.1 The authorised official 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 contravention;
 - (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 official 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 sells 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 of these by-laws.
- 4.2 Upon cancellation of registration in terms of sub-section (1), the registration certificate shall lapse and the facility shall be closed immediately, provided that, before cancellation of the registration,

the authorised official may in his sole discretion, suspend cancellation to afford the certificate holder an opportunity to remedy a defect in the premises or rectify an omission. If the certificate holder complies to his satisfaction, the authorised official may elect not to cancel the registration. During the period of such suspension, the certificate holder shall cease operation of the facility.

5. Termination of service

- 5.1 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

- 6.1 An authorised official 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 official has reasonable grounds for suspecting the existence of such service and conduct such examination, enquiry and inspection thereon as he may deem necessary.

7. Requirements for childcare facility

- 7.1 Every childcare facility shall comply with the under-mentioned requirements provided that the authorised official may determine such additional requirements as he may consider fit to meet any prescribed and/or desirable health and safety considerations:

7.2 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 safely keep their personal possessions.
- (b) The office, staff room and sickbay referred to in paragraph (a) may be combined.

7.3 Indoor Play Area:

- (a) Provision should 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.

7.4 Kitchen:

The kitchen must comply with the following requirements:

- (a) adequate and suitable cooking and washing facilities must be provided;
- (b) a smoothly finished floor of concrete or any other impervious material;
- (c) adequate natural lighting and ventilation;
- (d) wall surfaces should have a smooth finish and should be painted with a washable paint;
- (e) ceilings must be dust-proof;
- (f) all working surfaces must be of stainless steel or other impervious material;
- (g) cooling facilities for the storage of perishable food must be provided;
- (h) adequate storage space must be provided;
- (i) adequate number of waste bins with tightly fitting lids;

- (j) adequate supply of potable as well as hot water and cleaning agents for the cleansing of equipment and eating utensils must be provided;
- (k) the kitchen must be separate from the play area;
- (l) the kitchen must not be accessible to the children;
- (m) all foodstuffs must be protected from contamination by dust, dirt, pests and any contaminating agent;
- (n) kitchen staff must wear personal protective clothing which must be maintained in a clean and tidy condition at all times.

7.5 Sanitary facilities:

- (a) Subject to sub-section (b) provision must 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.
- (c) 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.
- (d) Separate toilet facilities must be provided for the staff as contemplated in the National Building Regulations.
- (e) Walls and floors of the sanitary facilities must be of an impervious material rendered to a smooth surface.
- (f) 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.
- (g) 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;
- (h) All basins must be closely fitted to the walls at the rear of such basins which walls shall be smooth and washable.

7.6 Outdoor play Area:

- (a) An outdoor play area of at least 2m² 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

- 8.1 The certificate holder shall ensure that a child minder facility complies with the National Building Regulations and that the following minimum accommodation and facility requirements are provided:
- (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 official;
 - (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 are fenced and has approved lockable or child-proof gates, provided that if such an area cannot be provided, the authorised official 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

- 9.1 The certificate holder shall, to the satisfaction of the authorised official, provide sufficient and suitable equipment in every childcare facility and, except where otherwise provided, such equipment shall comprise as least the under-mentioned items which items shall comply with the minimum requirements listed:
- (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 provided;
 - (e) sufficient, safe and adequate indoor as well as outdoor play apparatus and toys must be provided;
 - (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

10.1 Notwithstanding anything to the contrary contained in these by-laws, every childcare and childminder facility shall comply with the following general requirements:

- (a) All interior walls must have a durable finish that can be cleaned with relative ease.
- (b) All floors must be constructed of a smooth and impervious material that is durable and can be easily cleaned.
- (c) If carpeting is used on the floors, it must be kept clean at all times.
- (d) 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.
- (e) All windows and doors accessible to children must be constructed of safety glass.
- (f) A separate storage area must be provided for the storage of indoor and outdoor play materials, equipment, stretchers, sleeping mats, bedding and linen.
- (g) Waste bins with tightly fitted lids must be provided.
- (h) Apparatus and equipment used and any structures that may be on the premises must in no way present any danger to the children.
- (i) 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.
- (j) Pets may not be kept on the premises without the prior permission of Council.
- (k) 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.
- (l) No children may have free access to living quarters of staff at any time. Adequate measures must be taken to keep such living quarters separate from the facility.
- (m) Insects and vermin must be efficiently combated.
- (n) Where a child stays with the 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 per day, which meals must be balanced and meet the child's daily nutritional requirements.
- (o) Children must at all times be under the direct supervision of an adult staff member.
- (p) Staff should be trained and skilled in First Aid and Basic Fire Fighting.

11. Ratio of staff to number of children

11.1 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

11.2 Administrative and domestic staff are not included in the ratio referred to in sub-section (1).

12. Health register

12.1 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.

12.2 The names of children who are allergic to certain substances or products should be posted prominently in the facility.

A proper record of any medicine that is given to a child should be kept.

13. Medical care of children

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 sub-section (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 official 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 as 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 has cleared up.

14. Health and safety measures

14.1 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 official, 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 or other designated official of the municipality 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 official 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.

14.2 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, and or any other similar and applicable law 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 bylaws;
- (b) the duties placed upon and the powers vested in a medical official of health under the Regulations shall be placed upon or vested in the authorised official for the purposes of these by-laws.

15. Management responsibilities

15.1 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 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

16.1 The certificate holder shall ensure that -

- (a) if transport is provided for the children to and from the facility, the staff of the facility are held responsible for the child for the period that he is so transported until he is handed back to his 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

17.1 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 official; or
- (d) threatens, resists, interferes with or obstructs an authorized official 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 six months or to both the fine and the imprisonment.

18. Repeal of by-laws

- 18.1 Any by-laws adopted by the Council or the Council of a Municipality now forming an administrative unit of the Council and relating Creches and Creches cum Nursery Schools or any facilities in respect to or with regard to any matter regulated in these by-laws are hereby repealed.
- 18.2 Anything done under the provisions of the by-laws repealed by sub-section (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

- 19.1 These by-laws commence on the date of publication thereof in the Provincial Gazette.