



MANTSOPA LOCAL MUNICIPALITY

BUSINESS REGULATIONS BY-LAW

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PN 109 **PG 115** **20200221**

I, Sarah Matawana Mlamleli, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State Province, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association: Free State, do hereby in terms of Section 14(2)(a)(i) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), make the Standard By-law as set out in the Schedule.

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1. Definitions

In this By-law, unless the context indicates otherwise:-

"approval" means approval by the Council and **"approved"** has a corresponding meaning;

"authorised official" means any official of the Council who has been authorised by it to administer, implement and enforce the provisions of these By-laws;

"Council" means:-

(a) the Local Municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), exercising its legislative and executive authority through its Municipal Council;

(b) its successor in title; or

(c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-laws, has been delegated or sub-delegated or an instruction is given as contemplated in Section 59 of the Local Government: Municipal System Act, 2000 (Act No. 32 of 2000);

(d) a service provider fulfilling a responsibility under these By-laws, assigned to it in terms of Section 81(2) of the Local Government: Municipal System Act, 2000 or any other law, as the case may be;

"Council services" means any system conducted by or on behalf of a local authority, for the collection, conveyance, treatment or disposal of refuse, sewage, or storm water, or for the generation, impounding, storage or purification, or supply of water, gas or electricity, or municipal services;

"Council service works" means all property or works of whatever nature necessary for or incidental to any Council services;

"dwelling" means any house, room, shed, hut, tent, cave, container, shelter, vehicle, boat or any other structure or place whatsoever, any part of which is used or appears intended for use by any human being for sleeping or in which any human being dwells or sleeps and **"room"** has a corresponding meaning;

"environmental health officer" means an official appointment by the Council, and who is duly registered as environmental health officer or environmental health

practitioner with the Health Professions Council of South Africa in terms of Section 33(1) of the Medical Dental and Supplementary Health Services Professional Act, 1974 (Act No. 56 of 1974);

"**foodstuff**" means foodstuff as defined in Section 1 of the Foodstuff, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

"**goods**" means any movable property and includes a living thing;

"**hot water**" means water which has a minimum temperature of 55 at the point of discharge;

"**litter**" includes any receptacle, container or other matter, which has been discarded, abandoned or left behind by a trader or by his or her customers;

"**municipal area**" means the area under the jurisdiction of the Council;

"**Municipal Manager**" means a person appointed as such by the Council in terms of Section 82 of Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

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

National Road Traffic Act, 1996 (Act No. 93 of 1996)

[Editor's Note: Text as published in PG 163/2016]

"**occupier**" in relation to any dwelling, means any person:-

- (a) occupying the dwelling;
- (b) leasing the dwelling;
- (c) who is not occupying the premises but is entitled to do so; or
- (d) who manages the dwelling or a business on the dwelling on behalf of a person referred to in paragraph (a), (b) or (c);

"**prescribed**" means determined by resolution of the Council from time to time;

"**property**" in relation to trader, means any building, article, container, vehicle or structure used or intended to be used in connection with such business, and includes goods in which he or she trades;

"public road" means a public roads as defined in Section 1 of the National Road Traffic Act, 1996;

"roadway" means a roadway as defined in Section 1 of the National Road Traffic Act, 1996;

"the Act" means the Business Act, 1991 (Act No. 71 of 1991), and include the regulations promulgated thereunder;

"trade" includes:-

- (a) barter, exchange or hire out;
- (b) display, expose, offer or prepare for sale;
- (c) store on a public road or public place with a view to sell; or
- (d) provide a service for reward.

2. Meaning of words and expressions in Businesses Act incorporate in these By-law

In these By-laws, unless the context otherwise indicates, any word or expressions to which a meaning has been assigned, shall have a corresponding meaning in these By-laws.

3. Principles

- (1) Every person has a constitutional right to an environment that is not harmful to his or her health or well-being and the Council has a constitutional duty to strive, within its financial and administrative capacity, to promote a safe healthy environment.
- (2) The risk of a public health hazard occurring, continuing or recurring must be eliminated whether reasonably possible to do so, it must be reduced to a level acceptable to the Council.
- (3) Any person who owns or occupies a dwelling in the municipal area must ensure that it is used for and maintained in a manner that ensures that no public health hazard or public health nuisance occurs on the premises.
- (4) Any person who wishes to undertake an activity which creates a risk public health that is more than trivial or insignificant must:-

- (a) take all reasonable measures to eliminate that risk, and if that is not reasonably possible, to reduce the risk to a level acceptable to the Council; and
 - (b) bear the cost of taking those measures and of any reasonable costs incurred by the Council in ensuring that the risk is eliminated or reduced to an acceptable level.
- (5) The Council must regulate all activities and administer all matters for which it is legally responsible in a manner that:-
- (a) avoids creating a public health hazard or public health nuisance;
 - (b) does not make it easier for any human or animal disease to spread;
 - (c) does not give to unsanitary or unhygienic conditions;
 - (d) prevents unsafe food or drink from being eaten or drunk;
 - (e) avoids creating conditions favourable for infestation by pests; or
 - (f) wherever reasonably possible, improves public health in the municipal area.
- (6) In dealing with matters affecting public health the Council must:-
- (a) adopt a cautious and risk-averse approach;
 - (b) prioritise the collective interests of the people of the municipal area, and of South Africa, over the interests of any specific interest group or sector of society;
 - (c) take account of historic inequalities in the management and regulation of activities that may have an adverse impact on public health and redress these inequalities in an equitable and non-discriminatory manner;
 - (d) adopt a long term perspective that takes account of the interests of future generations; and
 - (e) take account of, and wherever possible without compromising public health, minimise any adverse effects on other living organisms and ecosystems.

4. Application of principles

The public health principle set out in Section 3 must be considered and applied by any person:-

- (a) exercising a power or function or performing a duty under these By-laws;
- (b) formulating or implementing any policy that is likely to have a significant effect on, or which concerns the carrying on of activities likely to impact on, public health in the municipal area; or
- (c) exercising a public power or function or performing a public duty in the municipal area which is likely to have a significant effect on public health in that area.

5. Prohibition on causing public health hazards

- (1) No person may create a public health hazard anywhere in the municipal area.
- (2) Every owner or occupier of premises must ensure that public health hazard does not occur on those premises.
- (3) An owner occupier of premises creates a public health hazard if:-
 - (a) the premises are infested with pests or pests are breeding in large numbers on the premises;
 - (b) there are conditions on the premises which are conducive to the spread of a communicable disease or which may cause a non-communicable disease;
 - (c) there is any unsanitary condition in any part of the premises; or
 - (d) any water supply for domestic consumption on the premises is unsafe for human consumption.

6. Duty to report public health hazards

The owner or occupier of a dwelling who knows of a public health hazard on that dwelling, must within 24 hours of becoming aware of its existence:-

- (a) eliminate the public health hazard; or

Trading

[Editor's Note: Text as published in PG 163/2016]

7. Single act constitutes trading

For the purpose of these By-laws a single act of selling or offering or rendering of services shall constitute trading.

8. Reference to legislation includes regulations made thereunder

For the purpose of these By-laws a reference to any legislation shall be a reference to that legislation and the regulations promulgated thereunder.

9. Assigning powers of a Council employee to employee of a service provider, where a service provider has been appointed

If any provision in these By-laws vests or imposes any power, function or duty of the Council in or on an employee of the Council, and such power, function or duty has in terms of Section 81(2) of the Local Government: Municipal Systems Act, 2000, or any other law been assigned to a service provider, the reference in such provision to such employee must be read as a reference to the service provide or, where applicable, an employee of the service provider authorised by it.

10. Prohibited conduct and Registration

(1) No person shall trade:-

- (a) at a place or in an area not zoned for business or where there is no consent use in terms of applicable legislation;
- (b) in a garden or a park to which the public has a right of access;
- (c) on a verge contiguous to:-
 - (i) a building belonging to, or occupied solely by, the State or the Council;
 - (ii) a church or other place of worship;
 - (iii) a building declared to be a Public monument;
 - (iv) an autoteller bank machine;
- (d) at a place where it causes an obstruction in front of:-
 - (i) a fire hydrant;
 - (ii) an entrance to or exit from a building;
- (e) at a place where it could obstruct vehicular traffic;

(f) at a place where it could substantially obstruct a pedestrian in his or her use of the sidewalk;

(g) on that half of a public road contiguous to a building used for residential purpose, if the owner or person in control, or any occupier of that building objects thereto and such objection is made known to the trader by an authorised official.

(2) No person may trade in such a manner as to:-

(a) create a nuisance;

(b) damage or deface the surface of any public road or public place or any public or private property.

(3) No person may:-

(a) trade unless he or she is a South African citizen or has the necessary permit from Department of Home Affairs or Department of Trade and Industry permitting him or her to carry on business in South Africa;

(b) make an open fire on a public road or public place; unless consent has been solicited from Council or the owner

(c) interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window, or obscure such goods from view;

(d) obstruct to, or the use of, street furniture and any other facility designed for the use of the general public;

(e) obscure any road traffic sign displayed in terms of National Road Traffic Act, 1996, or any marking, notice or sign displayed or made in terms of these By-laws;

(f) trade, or take up position, or place his or her property on a portion of a sidewalk or public place in such a manner that pedestrian traffic is substantially obstructed, nor shall a street trader occupy a demarcated stand or area, unless in possession of a permit authorising his or her occupation of such stand or area;

[Para. (f) substituted by PN 109/2020]

(g) other than in a refuse receptacle approved or supplied by the Council, accumulated, dump, store, or deposit, or cause or permit to be accumulated, dumped, stored or deposited, any litter on any land or premises or any public road or public place or on any public property.

(4)

(a) Any person intending to carry on any permanent business activity within the Mantsopa municipality shall notify the Council in writing of his or her intention to commence business, such notification to reach the offices of the municipality at least 28 days prior to the intended date of the proposed commencement of the business, advising the Council of the type of business to be conducted and give details of the premises, if any, to be used for the conduct of such business.

(b) No person shall carry on any business in or on any premises unless such activity or use is permitted in terms of the applicable town-planning scheme.

(c) The municipality shall have the authority to set or determine the number of tuckshops/house shops that can be built and allowed to operate.

(5) Application and Registration Fees

The Following Services Are Offered For Managing Informal and Formal Trading

1.1. STREET TRADING PERMIT

Informal Traders are provided with trading facilities in the form of a demarcated piece of space within the municipal area

1.2. APPLICATION PROCEDURE FOR STREET TRADING PERMIT/LICENSE

1.2.1. PROCESSING OF AN APPLICATION

It takes a maximum of three (3) weeks from the date of the launch of an application to issue a trading permit.

1.2.2. RENEWAL OF A TRADING PERMIT /LICENSE

The permit is renewable annually and is linked to a financial year of the municipality.

1.2.3. REQUIREMENT FOR APPLYING FOR A TRADING PERMIT/LICENSE

To apply for a trading permit, the following are needed by Mantsopa Local Municipality:

A fully completed application form which must be accompanied by the following documents;

- Certified Copy of ID book
- Proof of residential and postal address in the form of Municipal Account
- Proof of Business documents
- Proof of Permits in case of Foreign Nationals

1.3. REQUIREMENT FOR APPLYING FOR BUSINESS LICENCE

To apply for a business trading Licence, the following are needed by Mantsopa Local Municipality:

- A fully completed business licence application form is required which must be accompanied by the following documents;
- **Zoning Certificate** (Land Use Clearance Certificate) – issued by and after consultation with Town Planning. This certificate is required to determine the purpose of use of land and if deviation is required, a permission to deviate from the zoning scheme regulations must be authorised by Town Planning through stipulated processes in the Municipal Planning by-laws. The services in this regard can be accessed by submitting a request form.
- **Fire Clearance Certificate**, issued by and after a fire inspection has been conducted by Fire & Safety Division. An applicant may submit a request for fire inspection to be conducted with Business licensing Office
- A copy of **Building Plan** that has been approved by Mantsopa local municipality Building Inspectorate. In case such is not in place, an applicant can be directed to professional Draughts-man or Architect to have a building plan drawn.
- A **Certificate of Occupancy**, which will be issued by Town Planning if the building work has been completed in respect of the approved building plan, granted in terms of Section 7 of the National Building Regulations and Building Standards Act, No 103 of 1977. If the request is denied, the municipality must provide reasons for the refusal. The Certificate can be accessed by submitting a request form to Town Planning Division.
- A **Certificate of Acceptability for Food Premises**. This certificate is required where the applicant intends to manufacture, store, distribute, prepare, transport or sell any kind of foodstuff intended for public consumption. The Environment Health Practitioner will issue this certificate after satisfying himself that the applicant meet the requirements as stipulated in terms of Regulation.3 (6)(a) of the Regulations Governing General Hygiene Requirements and Transport of Food Government Notice R962 of 23/11/2012 as published under the Foodstuffs, Cosmetics and Disinfectants act, No 54 of 1972.
- **Municipal Account**: Applicant must attach a municipal account and proof that the account is settled. In case there are arrears, settlement arrangements must be done with Finance department, which will furnish applicant with letter to proof that such arrangement was reached.

In case of a Hawker the following are applicable;

A fully completed application form is required which must be accompanied by the following documents;

- Certified copy of ID book
- Permanent residential and postal address Account
- Certificate of Acceptability must be attached if selling of meals is involved

1.4. TYPES OF BUSINESS THAT QUALIFY FOR A TRADING LICENCE

The following types of businesses must be in possession of a Business Licence

1.4.1. GENERAL ESTABLISHMENTS

The following types of businesses must be in possession of a Business Licence
Accommodation establishment (guest house), chain stores, furniture stores, baker, butcher, café keeper, fishmonger or fish fryer, food manufacture, fruit, vegetables and plant dealer, general dealer, milk shop, miller, restaurant keeper, bottle stores & taverns (pubs), auto body and mechanics traders, taxi industry/commuter transport (business card), filling station, clothing (boutiques), farms, motor dealerships, hawkers dealing in perishables and food vending need to apply for a business license

1.4.2. ENTERTAINMENT ESTABLISHMENTS

A business licence is required for health and entertainment businesses that:

- provide Turkish baths, saunas or other types of baths;
- provide massage and/or infra-red treatment;
- provide the services of an escort;
- keep three or more mechanical, electronic or electrical devices (coin-operated gaming appliances);
- keep three or more snooker or billiard tables;
- keep or conduct a nightclub or discotheque;
- keep or conduct a cinema or theatre; or
- conduct an adult premises in terms of Section 24 of the Films and Publications Act, 1996

1.4.3. APPLICATION FEE

Depending on the length or period desired, the following fees will be applicable:

- A trading Licence application fee for a duration of One Year
- Tuck-shops /Spaza shops R500.00 pa
- Hawkers Hive Street hawkers
- Daily Vendors (Outsiders) R150.00
- Chain Stores R10000.00 pa
- Auto bodies and mechanics R6000.00 pa
- Restaurants R2500.00 pa
- Guesthouses R3000.00 pa
- General Dealers & Supermarkets (Locals R2500.00) (Foreign Nationals R20000.00)
- Bottle Stores & Taverns /Pubs R2500.00
- Taxis/Commuter Transport (Locally R3000.00) (Business Card R500.00)
- Farms R3000.00 pa
- General Dealers R2500.00 pa

- The fees will be changed annually in line with the approved municipal tariffs
- Only when all requirements are complied with, the applicant will be issued with an invoice indicating what amount to pay at the Cashiers office. No payment shall be accepted without this invoice.

To apply for a business Licence, visit the municipal offices in the following areas:

- Excelsior : 546 Commision Street
- Tweespruit : 20 Eaton Road
- Hobhouse : 29 Muller Street
- Thaba Patchoa : Municipal Office
- Ladybrand : 38 Joubert Street

For referral, Local Economic Development Division can be contacted at the following telephone numbers: 051 924 0654/0655

[Subs. (4) added by PN 109/2020]

11. Cleanliness

A trader must:-

- (a) not sleep overnight at the dwelling where he or she is trading;
- (b) keep the area or site occupied by him or her for the purpose of such business in a clean and sanitary condition;
- (c) keep his or her property in a clean, sanitary and well maintained condition;
- (d) dispose of litter generated by his or her business in whatever receptacle is provided by the Council for the public or at a dumping site of the Council;
- (e) not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
- (f) ensure that an completion of business for the day, the area or site occupied by him or her for the purpose of trade is free of litter;
- (g) take such precautions in the course of conducting his or her business as may be necessary to prevent the spelling onto a public road, or public place, or into a storm water drain, of any fat, oil or grease;
- (h) ensure that no smoke, fumes or other substance, odours, or noise emanating from his or her activities causes pollution of any kind;
- (i) on request by an authorised official of the Council, move his or her property so as to permit the cleansing of the space of the area or site where he or she is trading, or the effecting of Council services.

12. Offences and penalties

(1) Any person who:-

- (a) contravenes or fails to comply with any provision of this By-law;
- (b) fails to comply with any notice issued in terms of this By-law;
- (c) fails to comply with any lawful instruction given in terms of this By-law; or
- (d) who obstructs or hinder any authorised representative in the execution of his or her duties under this By-law,

is guilty of an offence and liable on conviction to a fine not exceeding R500 or, in default of payment, to imprisonment for a period not exceeding 3 (three) months and in the case of a continuing offence, to a further fine not exceeding R1 000 or, in default of payment, to imprisonment not exceeding one day, for every day during the continuation of such offence, after written notice has been issued by the Council and served on the person concerned, requesting the discontinuation of such offence.

13. Foreign Nationals

“PROCLAMATION by the President of the Republic of South Africa

COMMENCEMENT OF THE IMMIGRATION AMENDMENT ACT, 2011 (ACT NO. 13 OF 2011)

In terms of section 27 of the Immigration Amendment Act, 2011 (Act No. 13 of 2011), I hereby determine 26 May 2014 as the date on which the said Act shall
Come into operation.

Business visa

14.(1) An application for a business visa by a foreigner who intends to establish a business or

invest in a business that is not yet established in the Republic, shall be accompanied by

(a) a certificate issued by a chartered accountant registered with the South African

Institute of Chartered Accountants or a professional accountant registered with the

South African Institute of Professional Accountants to the effect that

- (i) at least an amount in cash to be invested in the Republic as determined from time to time by the Minister, after consultation with the Minister of Trade and Industry, by notice in the Gazette, is available; or
- (ii) at least an amount in cash and a capital contribution as determined from time to time by the Minister, after consultation with the Minister of Trade and Industry, by notice in the Gazette, is available;
- (b) an undertaking by the applicant that at least 60% of the total staff complement to be employed in the operations of the business shall be South African citizens or permanent residents employed permanently in various positions: Provided that proof of compliance with this undertaking shall be submitted within 12 months of issuance of the visa;
- (c) an undertaking to register with the
- (i) South African Revenue Service;
 - (ii) Unemployment Insurance Fund;
 - (iii) Compensation Fund for Occupational Injuries and Diseases;
 - (iv) Companies and Intellectual Properties Commission (CIPC), where legally required; and
 - (v) relevant professional body, board or council recognised by SAQA in terms of section 13(1)(i) of the National Qualifications Framework Act, where applicable, Provided that upon registration, all certificates shall be submitted to the Director General;
- (d) a police clearance certificate; and
- (e) a letter of recommendation from the Department of Trade and Industry regarding
- (i) the feasibility of the business; and

(ii) the contribution to the national interest of the Republic.

(2) An application for a business visa by a foreigner who has established a business or invested in an existing business in the Republic, shall be accompanied by

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(a) a certificate issued by a chartered accountant registered with the South African Institute of Chartered Accountants or a professional accountant registered with the South African Institute of Professional Accountants to the effect that

(i) at least an amount in cash to be invested or to be invested in the Republic as determined from time to time by the Minister, after consultation with the Minister of Trade and Industry, by notice in the Gazette, is available or already invested;

or

(ii) at least an amount in cash and a capital contribution as determined from time to time by the Minister, after consultation with the Minister of Trade and Industry, by notice in the Gazette, is available or already invested;

(b) proof that at least 60% of the total staff complement employed in the operations of the business are South African citizens or permanent residents employed permanently in various positions;

(c) proof of registration with the

(i) South African Revenue Service;

(ii) Unemployment Insurance Fund;

(iii) Compensation Fund for Occupational Injuries and Diseases;

(iv) Companies and Intellectual Properties Commission (CIPC), where legally

required; and

(v) relevant professional body, board or council recognised by SAQA in terms of section 13(1)(0 of the National Qualifications Framework Act, where applicable;

(d) a police clearance certificate; and

(e) a letter of recommendation from the Department of Trade and Industry regarding

(i) the feasibility of the business; and

(ii) the contribution to the national interest of the Republic.

A foreigner who invests or has invested in an existing business shall, in addition to complying with sub regulation (2), submit

(a) financial statements in respect of the preceding financial year; and

(b) proof of investment.

(4) The applicant must, within 12 months of the visa being issued, submit to the Director General a letter of confirmation from the Department of Labour that 60% of the staff complement employed in the operations of the business are South African citizens or permanent residents who are employed permanently in various positions.

(5) A business visa may be issued for a period not exceeding three years at a time.”

13. Regulations

(1) The Council may make regulations regarding:-

(a)

(i) the prescription of penalties for the offences contemplated in terms of Section 12; and

(ii) the amendment of such penalties from time to time;

(b) any other matter mentioned in the By-laws.

14. Short title

These By-laws are called the Business Regulations By-law.