15.	**URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER**

15.1	**STANDARD DRAFT BYLAW TOWNSHIP ECONOMIES AND THE REGISTRATION OF SPAZA SHOPS**

Collaborator No:
IDP KPA Ref No: VALLEY OF OPPORTUNITY
Meeting Date: 27 November 2024

1. SUBJECT: STANDARD DRAFT BYLAW TOWNSHIP ECONOMIES AND THE REGISTRATION OF SPAZA SHOPS

2. PURPOSE

To inform Council of the Standard Bylaw on Township Economies that was published by the Department of Cooperative Governance with a request that Municipality's adopt the Bylaw. The Municipality put a in place for a registration process for Spaza Shops, ensuring regulatory compliance in response to the President's announcement on Sunday, 17 November 2024, that all Spaza Shops must register their businesses within 21 days.

3. DELEGATED AUTHORITY

Council for notification

4. EXECUTIVE SUMMARY

Spaza shops are vital to the local economy, especially in townships and rural areas. They provide essential goods, foster entrepreneurship, and create employment. However, challenges such as lack of formal registration, regulatory non-compliance, and health risks from foodborne illnesses necessitate a structured approach to registration and support especially in the light of recent events where children died due to food purchased from spaza shops.

The municipality, in line with national directives and the Standard Draft By-law for Township Economies that was published, seeks to implement a formal registration process to address these challenges, promote inclusivity, and unlock economic growth.

The Standard Bylaw should not be adopted as is, it should be adapted to address the Stellenbosch Municipality specific situation before it can be brought to Council for an in principle approval for public participation. After a public participation the bylaw will be brought back to Council for approval and publication before implementation.

On 15 November circular 34 of 2024 was published by the Department of Cooperative Governance **(APPENDIX 1**) together with a draft standard By-law **(APPENDIX 2).**

5. RECOMMENDATIONS

(a) that Council take note of the Standard Township Economies By-law;

(b) that Council notes that a Bylaw will be brought back to Council for approval in principle before a public participation process is followed; and

(c) that Council notes the department's plan for the registration of Spaza Shops within the WC024.

6. DISCUSSION / CONTENTS

6.1 Background

The President announced on Sunday, 17 November 2024 (Appendix 1), that all spaza shop owners must register their businesses within 21 days. This directive follows a surge in suspected food poisoning incidents, which have tragically resulted in several fatalities, including children, across the country. In terms of the President's announcement, Municipalities are required to complete the registration of all Spaza Shops in their areas of jurisdiction by 13 December 2024.

6.2 Discussion

The National Government introduced a Standard Draft By-law for Township Economies **(APPENDIX 2),** which municipalities should adopt to facilitate the registration of Spaza Shops.

The by-law adoption process however involves public participation, legal reviews, feedback from internal municipal departments, and approvals from the Section 80 (portfolio) and the Mayoral committee, whereafter the Council must consider the adoption the by-law. While this process may take several months (up to six months), interim measures are put in place to ensure the registration process.

Whilst the process to put a Bylaw in place is continuing the Municipality is using existing legislation, which includes the Stellenbosch Municipality Zoning Scheme By-law, Land Use Planning By-law, National Building Regulations, Fire Safety Act, and Business Act, to issue necessary approvals, permits, and certificates. Spaza Shops must also secure a Certificate of Acceptability (CoA) from the Cape Winelands District Municipality to comply. The Economic Development section is in the process of developing a database of all Spaza Shops in the municipal area and guiding Spaza Shop owners/operators through compliance requirements.

Information sessions where information packs will be handed out to the Spaza Shop owners are scheduled for the following areas:

- Kayamandi on 28 November 2024;
- Klapmuts on 3 December 2024; and
- Franschhoek 4 December 2024.

The Economic Development section is working with the relevant ward councillors to assist with the completion of the lists of spaza shops and to notify the residents of the planned information sessions. Notices will be issued to all unregistered Spaza Shops to either close their business or to apply to obtain the required approvals. The Economic Development section will strive to issue as many as possible business licenses to all operators that adheres to the prerequisites (Fire certificate, certificate of acceptability, zoning certificate, approved building plan) by the 13th of December. The South African Police Service (SAPS) will be informed of spaza shops which do not have a business licence by the 13th of December but have submitted applications for processing.

- Below is a list of action points taken from the Implementation Plan

Action 1: Registration of Business Licenses

Actions:

Ensure spaza shop owners submit the required documentation:

- Application form for business license (A business license can only be issued when all of the below mentioned certificates, approvals have been issued).
- Certified ID.
- Fire certificate.
- Certificate of Acceptability (CoA) [Health certificate]
- Zoning certificate (zoning must permit a spaza shop on the premises, otherwise the necessary land use approval must be obtained).
- Approved building plans
- Proof of payment(s)

Implementation Steps:

Compilation of Database and Mapping:

- Leverage GIS systems to map Spaza Shops and monitor operations.
- Developed a digital, searchable database.

Information Campaign:

- Developed information packs for dissemination
- Host information sessions at key venues:

  - Kayamandi on 28 November 2024;
  - Klapmuts on 3 December 2024; and
  - Franschhoek 4 December 2024

Action 2: Monitoring and Enforcement

Regular Inspections:

- Conduct health and safety checks to ensure compliance with food safety regulations.
- Inspect stock for expired or counterfeit goods, with support from Cape Winelands Heath Department

Database Management:

- Use the database to track compliance and streamline communication with shop owners.

Action 3: Digital Transformation / Business License App:

- Develop and deploy a digital platform for registration and license issuance.
- Establish workflows and user-friendly interfaces

Action 4: Consideration to adopt and promulgate of Township Economy By-law

Composition and Circulation:

- Amend standard draft by-law for township economies.
- Advertise the by-law for public participation and obtain legal inputs
- Submit standard draft by-law with comments to Section 80 (portfolio) and MAYCO committees for consideration.
- Submit standard draft by-law with comments to Council for consideration to adopt

Expected Outcomes

- Enhanced formalisation of Spaza Shops,
- Strengthened health and safety compliance, reducing risks of foodborne illnesses.
- Improved local economic development and employment generation.

6.3 Financial Implications

R370 000 is required for an appointment of an data capture and for the AFLA business license App.

6.4 Legal Implications

The recommendations in this report comply with Council's policies and all applicable legislation.

6.5 Staff Implications

An additional temporary person must be employed to do the data capturing.

6.6 Previous / Relevant Council Resolutions:

None

6.7 Risk Implications

The risks are addressed through the content of the item.

6.8 Comments from Senior Management

The item was not circulated for Comment.

6.8.1 **Municipal Manager**

Supports the recommendations.

APPENDICES

Appendix 1: Circular No: 34 of 2024 – Implementation: Standard Draft By – Law Township Economies

Appendix 2: Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000): Standard Draft By-Law for Township Economies

FOR FURTHER DETAILS CONTACT:

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REPORT DATE	***26 November 2024***

APPENDIX 1

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CIRCULAR NO: 34 OF 2024

FROM : **DIRECTOR-GENERAL**

TO ALL : **HEADS OF DEPARTMENT RESPONSIBLE FOR LOCAL GOVERNMENT IN THE PROVINCES**

MUNICIPAL MANAGERS

IMPLEMENTATION: STANDARD DRAFT BY-LAW FOR TOWNSHIP ECONOMIES

(ISSUED IN TERMS OF THE MUNICIPAL SYSTEMS ACT, 2000)

1. PURPOSE OF THE CIRCULAR

The purpose of this Circular is to guide municipalities and provinces on the implementation of the Standard Draft By-law for Township Economies[1] issued in terms of Section 14 of the Local Government: Municipal Systems Act No. 32 of 2000.[2]

2. BACKGROUND

2.1 During 2022, the concerns raised by traditional leaders were discussed in a workshop convened by the Ministry and Department of Home Affairs[3], whereat a resolution was taken

[1] Hereinafter referred to as "SDB".
[2] Hereinafter referred to as "Municipal Systems Act".
[3] Hereinafter referred to as "DHA".

for the Ministry of Cooperative Governance and Traditional to develop a standard draft by-law to deal with the matter relating to, amongst other matters, spaza shops.

2.2 Drawing from the discussions held during the above-mentioned workshop, and the promulgation of the Gauteng Township Development Act No. 2 of 2022, during December 2023 the Department of Cooperative Governance[4] developed the SDB. In addition to the above, the SDB was borne out of reports that township businesses remain unregulated with many people unable to meaningfully participate in the mainstream economy. The reports also highlighted that these businesses often encounter significant challenges in building thriving and competitive businesses that are sustainable.

2.3 Township[5] businesses that are not growing economically lead to aggravated unemployment and inequalities resulting in communities not being able to work and invest where they live. Subsequently, the revenue generating capacity of municipalities is negatively affected as these spaces become welfare spaces depending mainly on government grants.

2.4 Over the past two years, township spaza shops have drawn the attention of the country as there were reported cases of food borne illnesses. By October 2024, over 200 cases of children that have fallen sick after eating suspected contaminated food and snacks had been reported with more than 20 children having lost their lives. The majority have been falling sick in groups after consuming products from the same vendor. Reports indicate that the foodborne illnesses are linked to poor food safety practices in township tuck shops, and others are linked to suspected poor hygiene and food handling practices. Concerns have been raised around food packaging.

2.5 While three (3) provinces namely, Gauteng, Eastern Cape and Limpopo were noted as hot spot areas, it is important that collective efforts are put in place to prevent the scourge from spreading to other provinces.

2.6 Following extensive consultations with the Department of Small Business Development[6]; DHA; Departments in the Economic Sectors Employment and Infrastructure Development (ESIEID) Cluster; Departments in the Justice, Crime Prevention and Justice Crime Prevention and Security (JCPS) Cluster; Heads of Department responsible for local government in the provinces; Municipal Managers; the South African Local Government Association[7]; and the public through publication of the SDB in the *Government Gazette,* the SDB was finalised.

[4] Hereinafter referred to as "DCoG".
[5] It is important to note that "Township" also includes rural areas where only the most basic amenities and infrastructure are provided.
[6] Hereinafter referred to as "DSBD".
[7] Hereinafter referred to as "SALGA".

2.7 In terms of section 14(1) of the Municipal Systems Act, the Minister of Cooperative Governance and Traditional Affairs published the SDB in *Government Gazette* No. 5i529 on 7 November 2024.

3. OBJECTIVES OF THE SDBs

3.1 The SDB introduces a standardised framework to support municipalities to promote commercial and industrial economic activities in townships and demarcate business areas and sites to promote inclusive economic development, as provided for by the Spatial Planning Land Use Management Act No. 16 of 2013.[8]

3.2 SPLUMA introduces the principles of spatial justice, spatial sustainability, spatial resilience, and efficient and good administration to guide land use governance and promotion of economic development.

3.3 Spatially targeted interventions in economically depressed areas such as townships and rural areas have the potential to unlock economic development opportunities, employment creation, alleviate poverty and inequalities.

4. SIGNIFICANCE OF THE SDB TO GROWING VIBRANT TOWNSHIP ECONOMIES

4.1 Despite the progressive policies and legislative frameworks that were introduced post the democratic government in 1994, the degree of inequality, as measured by the Gini coefficient, has worsened over the years indicative of the fact that inequality remains a serious constraint on the economic development of the country. According to the most recent data, South Africa has the highest income inequality in the world, with a Gini coefficient of around 0.67.

4.2 The SDB seeks to mobilise municipalities around a common national agenda and collective responses towards stimulating competitive and inclusive local economies and curbing of illegal business operations in townships, in line with municipal powers and functions as stipulated in Schedules 4 and 5 of the Constitution of the Republic of South Africa, 1996.[9]

4.3 Additionally, a balance must be achieved between regulation and empowerment of township businesses to avoid excluding them from mainstream economy and high costs of doing business and mitigate against illegal operations. Therefore, the aim of the SDB is to entrench a response to local challenges faced by people living, working, and operating businesses in townships through regulation and empowerment initiatives.

[8] Hereinafter referred to as "SPLUMA".
[9] Hereinafter referred to as the "Constitution".

5. ADOPTION AND IMPLEMENTATION OF THE SDB

5.1 It must be noted at the outset that the SDB is **A STANDARD DRAFT BY-LAW** and is merely a guide or template to assist municipalities to develop their own by-law to provide for this matter. The SDB should be viewed as a template or framework for consideration by municipalities across the country.

5.2 Municipalities are therefore advised to adapt the SDB to suit their local context and adopt them in terms of Section 14 (3)(a) of the Municipal Systems Act, which states that a standard draft by-law or an amendment of a standard draft by-law is applicable in a municipality only if, and to the extent and subject to any modifications and qualifications, adopted by the council of that municipality.

5.3 If a municipal council intends to adopt the standard draft by-law with or without any modifications or qualifications, Section 14(4) of the Municipal Systems Act requires the municipality to follow the procedure set out in Section 12(3), and after adoption, publish the by-law in accordance with Section 13 of the Municipal Systems Act.

5.4 The provincial departments responsible for Local Government in the Provinces and SALGA, have been advised to support municipalities to consider the SDB, and adopt the SDB in instances where such by-law is not in place.

6. A STRATEGY FOR IMPLEMENTING THE SDB

6.1 To address the sale of contaminated and expired food, as well as illegal goods in spaza shops, it is recommended that the municipality implement a comprehensive strategy to deal with these matters. The following are key considerations when developing such strategy –

NO.	KEY CONSIDERATIONS	MUNICIPAL INTERVENTIONS
(i)	Education and Training	Provide training for spaza shop owners and staff on food safety practices, including proper food handling, storage, and cooking techniques. This can be facilitated through workshops or partnerships with local health organizations.
(ii)	Regular Inspections	Establish a system for regular business inspections by business inspectors to ensure all businesses operating in the local environment are registered and comply with the Business Act.
(iii)	Regular Inspections	Establish a system for regular health inspections by local health authorities to ensure compliance with food safety regulations. Provide feedback and support to help shops improve.
(iv)	Community Awareness Campaigns	Launch community awareness campaigns to educate customers about food safety, signs of spoilage, and how to report unsafe practices.

NO.	KEY CONSIDERATIONS	MUNICIPAL INTERVENTIONS
(v)	Access to Resources	To set minimum resource requirements such as handwashing stations, refrigeration units, and safe food storage solutions to enhance food safety in spaza shops.
(vi)	Traceability Systems	Implement traceability systems for food products sold in spaza shops, allowing for quick action in the event of a food borne illness outbreak.
(vii)	Ensure Safe Sourcing	Set a system of compliance for spaza shops to report on the sourcing of food from reputable suppliers and farmers who follow safe practices.
(viii)	Feedback	Establish a feedback system for customers to report issues related to food safety anonymously.
(ix)	Promote Safe Food Preparation	Encourage the use of safe cooking methods, such as thorough cooking and avoiding cross-contamination.
(x)	Government Support	Continue to advance government policies that support small businesses in meeting food safety standards and accessing training resources.

7. ROLES AND RESPONSIBILITIES

7.1 Successful implementation of the SDB and the prevention of illegal business activities in townships will require collective efforts from all stakeholders. The table below provides roles of the key stakeholders, namely DCoG, provincial departments responsible for local government, DSBD, DHA, DoH, Consumer Protector, Competition Commission, South African Police Service, and the South African Revenue Service, as follows -

STAKEHOLDER	ROLES AND RESPONSIBILITIES
DCoG	▪ Develop SDB. ▪ Coordinate stakeholders.
CoGTAs and Economic Development[10] (Provincial)	▪ Align provincial legislation with national legislative frameworks. ▪ Provide support to municipalities and monitor implementation of the Acts.
Municipalities	▪ Implement and enforce the SDB in collaboration with CoGTAs and DEDs, DSBD, DHA, DoH, Competition Commission, Provincial Consumer Protector, National Consumer Commission, and other stakeholders. ▪ Issue trading permits and Health and Food Safety Certificates to qualifying businesses. ▪ Environmental Health Practitioners and Law Enforcement to conduct regular inspections.
DSBD	▪ Monitor the implementation of the National Business Act.

[10] Hereinafter referred to as "DED".

STAKEHOLDER	ROLES AND RESPONSIBILITIES
	▪ Develop a framework to guide business operations (e.g., who is eligible to operate a business in the country and determine quotas to protect specific sectors). ▪ Provide financial and non-financial support to qualifying businesses.
DoH	▪ Ensure that Environmental Health Practitioners conduct regular health inspections.
DHA	▪ Enforce and monitor the Immigration Act.
Competition Commission	▪ Enforce and monitor the Competition Act which empowers them to investigate, control and evaluate restrictive business practices among others.
Consumer Protector	▪ Monitor and enforce Consumer Protection Act. ▪ Conduct regular inspection.
NATJOINTS[11]	▪ Overall coordination and law enforcement.
SARS	▪ Ensure taxation and revenue collection from businesses.
Citizens	▪ All citizens must ensure that all unlawful actions are immediately reported to the relevant authorities.

8.1 All stakeholders must ensure enforcement in relation to their respective mandates, and also undertake public awareness campaigns.

8. ESTABLISHMENT OF DATABASE OF BUSINESSES

8.1 All business must ensure that the information required in terms of section 7(4) of the SDB is uploaded in municipal databases.

8.2 In order to build a database that will also geo-locate the businesses, businesses will also be required to upload their location onto the database.

9. EMERGING RISKS

9.1 The increase in awareness that is being created in this regard is bound to result in those businesses that have been engaged in unlawful activities and stocking contaminated / expired food, as well as poisonous consumables to “dump” their contraband in places that communities will have access to.

9.2 The safe disposal of expired food and poisonous consumables is a critical component of containing further exposure to the public. In this regard municipalities must -

- Communicate in local channels to the public never to use or pour out illicit pesticides. They can be highly toxic and harmful to humans, animals, and the environment

[11] National Joint Intelligence Structure.

- Provide guidance to communities on where expired food and poisonous consumables can be disposed of safely and without cost.
- Encourage communities until disposal, store the expired food and poisonous consumables in their original containers with labels intact, and mark them as expire. It should be kept in a secure, well-ventilated area away from children, pets, and food.
- Encourage communities to adhere to all local, provincial, and national regulations, bylaws and standards regarding the disposal of expired food and poisonous consumables. Municipalities must set up mechanisms where communities can obtain guidance on the legal requirements and safe disposal methods.
- Encourage communities to avoid mixing expired food and poisonous consumables with other types of waste.
- Host voluntary collection events of expired food and poisonous consumables, expired food and poisonous consumables from the community.

10. NEXT STEPS

11.1 Municipalities are required to adopt their by-law to address local economies before the end of November 2024, in accordance with the relevant provisions of the Municipal Systems Act.

11.2 An editable version of the SDB is available on the website of DCoG; municipalities are encouraged to download the SDB for customization and subsequent processing through the municipal council.

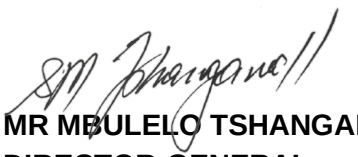
11.3 To strengthen our coordination role and support municipalities to implement the SDB, the DCoG and DSBD will activate interdisciplinary inspection teams to upscale inspections in the hotspot provinces.

11. ENQUIRIES

Enquiries relating to this Circular may be directed to the following officials in the Department –

- Mr. Mohlatlego Vinny Rabothata, Chief Director: Development Planning Tel: 012 334 4882; Cell: 066 484 5048; Email: MohlatlegoR@cogta.gov.za; or
- Ms. Viwe Sibelekwana, Director: Local Economic Development Planning Tel: 012 336 5836; Cell: 064 850 8841; Email: ViweS@cogta.gov.za.

Yours Sincerely,



MR MBULELO TSHANGANA
DIRECTOR-GENERAL
DATE: 15 November 2024

c.c.:
- **(i) NATJOINTS**
- **(ii) Director-General: Presidency**
- **(iii) Director-General: Department of Health**
- **(iv) Director-General: Department of Home Affairs**
- **(v) Director-General: Department of Small Business Development**
- **(vi) Director-General: Department of Trade Industry and Competition**
- **(vii) Chief Executive Officer: SALGA**

APPENDIX 2

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DEPARTMENT OF CO-OPERATIVE GOVERNANCE

NOTICE 2826 OF 2024

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000 (ACT NO 32 OF 2000)

STANDARD DRAFT BY-LAW FOR TOWNSHIP ECONOMIES

I, Velenkosini Hlabisa, Minister for Cooperative Governance and Traditional Affairs hereby, in terms of section 14(1) of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), and after complying with the procedural requirements in this section, make the Standard Draft By-Law for Township Economies, in the Schedule.

MR VELENKOSINI HLABISA
MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
DATE: 04/11/2024

SCHEDULE

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Preamble

Whereas sections 152(1) and 153(a) of the Constitution of the Republic of South Africa, 1996 ("Constitution"), require municipalities to promote social and economic development within their jurisdictional areas;

And whereas the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), mandates municipal spatial development frameworks to identify current and future economic nodes where public and private investment will be prioritised and identify the designation of areas where incremental upgrading approaches to development and regulation will be applicable;

And whereas the Businesses Act, 1991 (Act No. 71 of 1991), provides for municipalities to declare and prohibit trading in zones within their jurisdictional areas;

And whereas the dense concentration of poverty, unemployment and related social ills make townships a priority for inclusive growth and development;

And whereas Government acknowledges that townships must be vibrant economic centres;

And whereas section 22 of the Constitution guarantees the right of every citizen to choose his or her trade, occupation or profession freely, and empowers the State to regulate the practice of a trade, occupation or profession by law;

And whereas Government recognises that participation and meaningful inclusion of businesses in townships will transform the economy,

Be it therefore enacted by the Municipal Council of (Insert municipality name)**,** as follows:

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Definitions

1. In this Standard Draft By-Law, a word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned and, unless the context otherwise indicates—

"authorised official" means an employee of the municipality who is duly responsible for carrying out any duty or function or exercising any power in terms of this Standard Draft By-Law and includes—

(a) a law enforcement officer declared to be a peace officer in terms of section 334(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and

(b) any other employee delegated or person authorised to carry out or exercise the duty, function or power;

"business" means an entrepreneurial undertaking, or a business concern, whether formal (registered) or informal (unregistered), which is engaged in the production of goods or provision of services or sale of goods, undertaken by an entrepreneur or an enterprise, an enterprise organisation or a co-operative as categorised in the National Small Business Act;

"Businesses Act" means the Businesses Act, 1991 (Act No. 71 of 1991);

"business activity" means the selling of goods, or the supplying or offering to supply a service for remuneration;

“business licence” means a licence or permit issued by a local government that allows an individual or company to conduct business within the government's geographical jurisdiction;

“foreigner” means an individual who is neither a South African citizen, nor a permanent resident, but is not an illegal foreigner in terms of the Immigration Act, 2002 (Act No. 13 of 2002);

"goods" means a product marketed for human use or consumption;

"illegal goods" means—

(a) goods which may not have been lawfully acquired or disposed of;

(b) goods that are prohibited from sale or distribution under any applicable national, provincial, or municipal law;

(c) counterfeit goods as defined in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997);

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(d) goods that are required to be, but have not been, imported or produced in terms of the provisions of the Customs and Excise Act, 1964 (Act No.91 of 1964);

(e) stolen goods; or

(f) goods that do not meet mandatory safety or quality standards as prescribed by relevant legislation;

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

"Minister" means the Minister responsible for local government;

"municipal council" means a municipal council referred to in section 157(1) of the Constitution;

"municipal manager" means a person appointed in terms of section 54A of the Municipal Systems Act, as the head of administration of the municipality;

"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"nuisance" means conduct or behaviour by a person, an organisation, business or institution or the use, keeping, producing, by-producing, harbouring or conveying, as the case may be, of any item, substance, matter, material, equipment, tool, plant or animal or causing or creating a situation or condition in or on private property or in a public place or anywhere in a municipality which causes damage, annoyance, inconvenience, noise pollution or discomfort to the public or to a person, in the exercise of rights common to all or of a person;

"National Road Traffic Act" means the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"obstruct" means to do anything which blocks or is likely to block vehicular or pedestrian traffic flow on a public road or private road, open or public space or private space;

"PAIA" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

"public monument" means any one of the "public monuments and memorials", as defined in section 2 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999);

"public place" means a building, square, park, recreation ground or open space to which the public has the right of access, or which is shown on a general plan or land use scheme of a township filed in the deeds registry, Surveyor-General's office or a municipality, and has been provided for the use of the public or the owners of erven in such township;

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"public road" means a public road as defined in section 1 of the National Road Traffic Act;

"sell" means exchange, offer, display, deliver, supply or dispose of, for sale or authorise, direct or allow a sale;

"services" means activities or value created, generated or performed for human consumption;

"sidewalk" means a sidewalk as defined in section 1 of the National Road Traffic Act;

"Spatial Planning and Land Use Management Act" means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

"townships" means residential townships where only the most basic amenities and infrastructure are provided which were initially established during the Colonial and Apartheid eras for occupation by Black South Africans on the outskirts of towns and cities and now also include newly created residential townships, in and on the outskirts of towns and cities, which have been created as a result of South Africa's history; and

"township economies" means business activities (formal or informal) undertaken in townships.

Objectives

2. The objects of this by-law is to—

(a) facilitate inclusive spatial and economic development in townships;

(b) harmonise the township ecosystem and provide norms and standards for the establishment and management of township-based enterprises both formal and informal;

(c) raise awareness of applicable laws and regulations affecting township businesses; and

(d) support small businesses to grow and participate in mainstream economic activities.

Freedom to engage in business activities

3.(1) Subject to subsection (2) any person that has a business licence, may engage in business activities within the area of jurisdiction of a municipality.

(2) A municipality may, based on its developmental objectives, determine quotas on the proportion of businesses within specific categories of businesses, to be owned and operated by foreigners in line with all the relevant legislation.

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(3) In determining the quotas a municipality must ensure, amongst others, that a proportion of the total staff employed in the business are South African citizens or permanent residents in line with all relevant legislation.

(4) A business activity referred to in subsections (1) and (2), is subject to the provisions of—

(a) legislation in the Republic of South Africa;

(b) applicable permits or licencing requirements;

(c) other applicable municipal by-laws and policies; and

(d) this standard draft by-law.

(5) A person may not carry on a business activity within the area of jurisdiction of a municipality unless that person is a holder of a business permit issued or transferred to him or her by the municipality.

Designated business areas and sites

4.(1) A municipality must, subject to the provisions of the Spatial Planning and Land Use Management Act and any other applicable legislation, policy or by-law—

(a) promote commercial, retail and industrial activities in townships; and

(b) demarcate business areas and sites to promote inclusive economic development or recognise a township as a mixed-use business area.

(2) A municipality may, by resolution—

(a) extend, reduce, or disestablish a business area or site subject to compliance with the requirements of the Spatial Planning and Land Use Management Act and after public consultation and reasonable notice;

(b) lease land or a portion of a property from the owner or occupier on condition that the owner or occupier allows a specified number of businesses to trade on such property on terms and conditions determined by the municipality over an agreed period; or

(c) where possible, provide infrastructure for businesses that are leasing.

Issuing of permits

5.(1) A municipality must issue a permit if it is properly applied for, unless—

(a) the permit holder does not comply with the relevant provisions of this standard draft by-law;

(b) the goods or services provided by the business are illegal; or

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(c) the business premises do not comply with the requirement relating to town planning or the safety or health of the public, or any law which applies to those premises.

(2) The municipality must be satisfied that the applicant will be in actual and effective control of the business.

(3) A municipality may grant the permit on condition that—

(a) the goods and services sold are legal; and

(b) the business premises comply with the requirement relating to town planning or the safety or health of the public, or any law which applies to those premises.

(4) A municipality may, on application by a permit holder—

(a) amend a condition;

(b) extend the period of the permit;

(c) revoke a condition; or

(d) indicate that the condition specified in the permit is complied with.

Proactive steps to be undertaken by municipality

6. A municipality must perform its functions and exercise its powers to—

(a) build the operational and management capacity of entrepreneurs and small businesses in townships through workshops, training or mentoring;

(b) conduct business compliance and awareness workshops;

(c) facilitate skills development and business development support services for township businesses;

(d) facilitate access to infrastructure for township businesses; and

(e) facilitate access to markets for township businesses.

Registration and permitting of business activities

7.(1) A municipality must delegate the authority to deal with the registration, permitting and enforcing of the by-law for township economies to the municipal manager or any other delegated official.

(2) The delegated official is responsible for—

(a) creating awareness about the application process and applicable policies and by-laws;

(b) assisting and supporting applicants in the application process;

(c) administering the processing of applications and the timely processing of applications within a set period;

(d) reviewing and approving applications for registration or permitting including—

(i) receiving, reviewing and approving applications for registration or permitting within a set period;

(ii) investigating the feasibility of the application and the compilation of a report thereon;

(iii) submitting the application and the feasibility report to the delegated authority; and

(iv) issuing of registration cards or permits;

(e) resolving complaints and disputes occurring between the municipality and a business; and

(f) facilitating efficiency and municipal responsiveness in registering and permitting businesses, as well as enforcing by-laws.

(3) Application forms for registration or permitting can be accessed physically at the municipal offices and on the municipal website.

(4) The municipal manager or a delegated official is responsible to establish and maintain a database of registered businesses, which may contain the following information and must be managed in accordance with PAIA guidelines:

(a) The full name, surname, gender and disability status of the business owner;

(b) the identity number of the business owner concerned;

(c) the physical and postal address of the business concerned;

(d) the location where the business concerned is authorised by such registration to carry on business, and if such registration applies to a trading plan area, the trading bay or market allocated to such a business in accordance with the applicable trading plan;

(e) a description of the goods or services that the business concerned is authorised by such registration to sell or provide;

(f) a distinguishing registration number;

(g) citizenship status, passport number, section 22 asylum seeker permit, section 24 refugee permit, valid visa allowing foreign national to be in the Republic to work or conduct business; and

(h) any other information that may be required by this by-law or any other law.

(5) The applicant must provide a sworn affidavit stating that he or she is not engaged in the trade of illegal goods as defined in this by-law and that his or her business operations are within applicable norms and standards.

(6) The municipality reserves the right to conduct background checks on applicants, including liaising with law enforcement agencies, to verify the legality of their business activity.

(7) A registered business must be issued with a registration card or permit that must be displayed and be available for inspection at all times.

(8) The responsible official must put in place a complaints system that can be used by residents and community members to report and receive feedback regarding their complaints or concerns and an appeal process.

Transferability of permit

8.(1) In the event of the death of a permit-holder and the loss of income generated by the informal trading which results in the dependents of the deceased permit-holder being placed under undue or severe economic hardship, a permit may be transferred, by the municipality, to a dependant, or an assistant acting on behalf of the dependant, who may continue trading until the permit is no longer valid.

(2) A permit may be temporarily transferred for a period of no longer than twelve months by the municipality, to a dependent or, where there is no dependent, to an individual nominated by the permit-holder, if the permit-holder is unable to perform his or her functions: Provided that an affidavit is provided to the municipality stating the nature and period for which the permit-holder requires the permit transfer.

(3) A dependent or assistant is only permitted to replace the permit-holder for the period stipulated in the affidavit and approved by the municipality.

(4) A permit-holder may not transfer a permit to any other person in any manner.

(5)(a) If a permit is transferred by the municipality and the new holder does not resume trading within a period stipulated in the transfer notice, the municipality may revoke the permit and in such a case the permit must immediately be returned to the municipality.

(b) Details of revoked permits must be placed on a database to be shared with relevant departments.

(6) If a permit holder no longer wishes to trade, the municipality may revoke the permit and in such a case the permit must immediately be returned to the municipality.

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(7) A permit transferred may not be used for the purpose of a business other than the business to which the permit relates.

Prohibitions and restrictions

9.(1) Except in cases where prior approval has been granted by the municipality, a person may not carry out a business activity—

(a) in a garden or park to which the public has a right of access;

(b) on a verge adjacent to—

(i) a building belonging to, or occupied by an organ of state;

(ii) a church, mosque, synagogue or other formal registered place of worship; or

(iii) a building belonging to, or occupied by the municipality;

(c) at a building declared to be a public monument;

(d) next to an auto teller bank machine;

(e) at a place where—

(i) it causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;

(ii) it causes an obstruction to vehicular traffic; or

(iii) it substantially obstructs pedestrians in their use of a sidewalk;

(f) on a verge adjacent to a building in which business is conducted by a person who sells goods of the same nature as or of a similar nature to goods being sold by the seller concerned; and

(g) on half of a public road adjacent to a building used for residential purposes, if the owner or person in control or an occupier of the building objects thereto.

(2) A person carrying on a business—

(a) may not sleep overnight at the place of such business, except in a case where prior approval has been granted by the municipality or where the business is operating from residential units or structures;

(b) may not place his or her property on a public road, except in cases where prior approval has been granted by the municipality;

(c) may not construct a permanent structure on a public road or public place other than a shed, shack, Wendy house or poles implanted into the ground,

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and other infrastructural arrangements common in the street trading environment;

(d) may not buy goods from an establishment that does not comply with relevant regulatory prescripts;

(e) may not sell expired items;

(f) must ensure that his or her property or area of activity—

(i) does not cover an area of a public road, or a public place which is greater than six square metres (with a maximum length of three metres) in extent, unless otherwise approved by the municipality; and

(ii) in respect of a sidewalk, leaves an unobstructed space for pedestrian traffic, being not less than one and a half metres wide when measured from any contiguous building to the property or area of activity, and not less than one half metre wide when measured from the kerb line to the property or area of activity;

(g) may not conduct business on a sidewalk where the width of such sidewalk is less than one metre;

(h) may not place or stack his or her goods in such a manner that such goods are likely to injure a person or cause damage to property;

(i) may not sell, distribute or store illegal goods or goods that do not comply with acceptable standards;

(j) may not carry on business in such a manner as to—

(i) create a nuisance;

(ii) create a traffic, health hazard, or health risk;

(iii) obstruct access to, or the use of, street furniture or any other facility designed for use by the general public;

(k) must maintain records of the identification of his or her suppliers and be able to provide proof of the legitimate sourcing of the goods upon request by an authorised official; and

(l) may not knowingly purchase goods from suppliers engaged in the trade of illegal goods.

Hygiene and waste removal

10.(1) A person operating a registered business must—

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(a) ensure that the business complies with health and safety requirements and has the applicable health and safety certificates;
(b) ensure that the food sold in the business is not contaminated by insecticides, pesticides, or any poisonous substance;
(c) keep the business area or site occupied by him or her for the purposes of such business activity, in a clean and sanitary condition;
(d) keep his or her property in a clean, sanitary and well-maintained condition;
(e) dispose of litter generated by his or her business in whatever refuse receptacle provided by the municipality for the public, or at a dumping site of the municipality;
(f) ensure that no excessive smoke, fumes or other substance, odours, or noise, emanating from his or her business activities, causes pollution of any kind;
(g) ensure that the necessary recycling methods are utilised; and
(h) dispose of hazardous and e-waste in the correct manner.

(2) The owner of the property where business activities, including selling prepared meals or beverages, take place, must ensure that there is appropriate infrastructure, including ablution facilities.

Restricted and prohibited areas

11.(1) A municipality may in terms of section 6A(2) of the Businesses Act, after consulting the public and by resolution, declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited, and must, to enable compliance therewith, prescribe or make signs, markings or other devices indicating—

(a) specified hours during which business activity in respect of particular goods or services is restricted or prohibited;
(b) the boundaries of the restricted or prohibited areas; and
(c) any other restriction or prohibition against business activity regarding the area in question.

(2) A municipality must display any such sign, marking or device in such a position and manner as will indicate the restriction or prohibition and the location or boundaries of the area concerned.

(3) A sign erected in terms of this by-law or the Business Act serves as sufficient notice of the prohibition or restriction in respect of the area concerned.

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(4) A sign contemplated in subsection (1) may be amended from time to time and displayed by the municipality for the purpose of this by-law and has the same effect as a road sign in terms of the National Road Traffic Act, 1996.

(5) A registered business must not cause any nuisance.

Offences and penalties

12.(1) A person who—

(a) contravenes, or fails to comply with, a provision of this by-law;

(b) fails to comply with a notice issued in terms of this by-law;

(c) fails to comply with a lawful instruction given in terms of this by-law; or

(d) who obstructs or hinders an authorised official in the execution of his or her duties under this by-law,

is guilty of an offence and must be served with a written warning advising of the offence, the remedial action and applicable times, consequences for failure to redress, and the appeal process.

(2) Despite the provisions of subsection (1), a person found to be transgressing any provision of this by-law must—

(a) on a first transgression, be served with a written warning notice informing that person of the transgression and that his or her business licence may be cancelled immediately if he or she does not remedy the transgression within a reasonable time based on industry or sector trends; and

(b) on a subsequent transgression, be served with a written notice informing that person of the transgression and that, subject to an appeal process, his or her business licence is immediately cancelled and that he or she will be barred from reapplying for a licence in any municipality for a period of five years after the subsequent transgression.

(3) Different penalties may be effected in respect of different businesses based on industry trends.

Appeals

13. (1)A person who feels aggrieved by the decision of the municipality may lodge an appeal within a period of 21 days after receipt of the application outcome or within such extended period as may be agreed upon between the municipality and the applicant concerned.

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(2) During the appeal process it is presumed that the application was unsuccessful.

Enforcement of by-law

14. (1) An authorised official appointed by the municipality is responsible for monitoring and enforcement of this by-law and must regularly liaise and co-operate with officials of the Department of Home Affairs, the Department of Health and the South African Revenue Service to ensure compliance with relevant and applicable legislation.

(2) A municipality may—

(a) apply its discretion to impound business equipment where continuous transgression without remedy is observed; or

(b) release the business equipment at a fee in line with municipal tariffs.

(3) (a) A municipality may impound goods on reasonable suspicion that such goods are expired or illegal.

(b) Goods that are confirmed to be expired or illegal must be handed over to the relevant government body for destruction.

(4) A municipality must establish a task team dedicated to combating the trade of illegal goods and services, which must—

(a) conduct regular inspections of businesses to verify that they are registered and that the products being sold are legal and comply with applicable regulatory requirements or norms and standards;

(b) collaborate with national and provincial law enforcement agencies to share information and conduct joint operations against illicit trade networks;

(c) implement a confidential reporting system for the public and other traders to report suspected illicit trade activities;

(d) implement information programmes to educate businesses on what constitutes an illegal product; and

(e) subject to the Protection of Personal Information Act, (Act No. 4 of 2013), implement a central repository of individuals whose licences have been cancelled due to non-compliance with the by-law and share details on an annual basis with other municipalities.

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Amendment of by-laws and transitional measures

15. Once approved, the municipality must consider the impact of this by-law on all other by-laws and must amend sections that conflict with the provisions of this by-law or amend the applicable by-laws to be in line with the provisions of this by-law.

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