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PROVINCIAL NOTICES

[NO. 151 OF 2010]

**NOTICE IN TERMS OF SECTION 14(2)(b) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000 (ACT No. 32 OF 20000)
STANDARD COMMONAGE BY-LAWS**

- [1.] I, **MOSEBENZI ZWANE**, Member of the Executive Council responsible for Cooperative Governance and Traditional Affairs in terms of Section 14(2)(b) of the Local Government: Municipal Structures Act, 2000 (Act No. 32 of 2000) hereby publish standard draft by-laws for Commonages as set out in the Schedule hereto for public comment.
- [2.] The public and interested parties are invited to submit comments in writing on these proposed standard draft by-laws by not later than 30 days from the date of publication of this notice, to -

The Chief Director
Systems And Capacity Building
Department of Cooperative Governance
and Traditional Affairs
Local Government Branch
PO Box 211
BLOEMFONTEIN
9301

Comments may also be submitted by facsimile to number 086 698 8906 or by e-mail to

chohne@lgh.f.sgov.za

SCHEDULE

DRAFT STANDARD BY-LAWS RELATING TO COMMONAGES

Purpose of Draft By-Laws

The purpose of these draft by-laws is to:

- (a) Set aside land identified as commonage for the pasture of animals and for the purpose of establishing garden allotments; to assist with local development and provide for an inexpensive portion of land to people with a focus on registered indigents; to provide for the conservation of the commonage through the prohibition of certain activities, the damaging of vegetation, bird- and animal life and to provide for matters incidental thereto, and
- (b) Manage together with the Department of Agriculture land made available by the Provincial Land Reform Office of the Free State to assist categories of emerging farmers.

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Definitions

- 1. In these by-laws, unless the context otherwise indicates, words referring to -
 - (a) the singular include the plural and vice versa;
 - (b) any one gender include both genders, and -

"animal" means any livestock defined hereunder: cattle, sheep, goat (ruminants); horse, mule, donkey (non-ruminants) ostrich (monogastic) and pig or the hybrid of such animal).

"commonage" means any land or portion of land which is in possession or under the control of the municipality and set aside by the municipality for the purposes of establishing grazing camps for animals, irrigation land or plots for gardening or other economic activity, excluding any farm the municipality is leasing to a commercial farmer as an entity;

"commonage management committee" means a representative management body comprising at least 1 member but not more than 2 members of the owner, X members of the beneficiary group and X other persons agreed to by the Owner and the Beneficiary Group;

"Department of Agriculture" means the National Department responsible for Agriculture;

"commonage manager" means a manager appointed in terms of Section 56 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) by a Municipal Council, after consultation with the municipal manager, who is directly accountable to the municipal manager.

"municipal area" means any land situated inside the area of jurisdiction of the Municipality of which the Municipality is the owner, but outside the boundaries of any residential area;

"Municipality" means the Local Municipality established in terms of Section 12 of the Local government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with these by-laws by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

"Municipal Manager" means the person appointed in terms of section 82 of the Local Government: Municipal Structures Act 1998 (Act No. 117 of 1998);

"permit holder" means the person to whom a permit has been issued by the Municipal Manager in terms of these by-laws;

"plot" means any portion of a commonage set aside by the municipality for other purposes than grazing or irrigation farming.

Commonage

- 2. (1) The Municipality may by resolution, subject to the provisions of any law or any restrictions regarding the use of land in the title deed of that land:
 - (a) Reserve suitable municipal land as commonage,
 - (b) At any time add defined municipal land to the commonage so reserved, and
 - (c) At any time, partly or wholly in consultation with the Premier of the Free State withdraw any land which forms part of the commonage.
- (2) The Provincial Land Reform Office may purchase and make available land to the municipality in terms of section 10 of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993) for the purpose of farming activities by categories of emerging farmers.
- (3) The Municipality must subject to the provisions of any law or any restrictions regarding the use of land in the title deed of that land manage together with the Department of Agriculture any land acquired by the Provincial Land Reform Office and transferred to the Municipality for the purpose of a commonage as such;
- (4) The Municipality may subject to the provisions of any law or any restrictions regarding the use of land in the title deed of that land at any time, partly or wholly withdraw any land which forms part of the commonage, excluding the commonage or portion of the commonage mentioned in subsection (2), in consultation with the Premier of the Free State.

Eligibility Criteria

- 3. The following persons would be eligible for using the commonage:
 - (a) residents of the town owning the commonage, and
 - (b) households that qualify in terms of municipality's indigent policy

Commonage Fees

- 4. The Council by resolution may set fees for the use of commonage land and for this purpose may differentiate between categories of commonage users.

Commonage Management Committee

5. (1) Users of land on the commonage must establish a commonage management committee facilitated by the Municipal Manager as set out in Annexure A;
- (2) The Municipal Manager in the event of leasing the commonage to a functioning commonage management committee may not issue grazing or irrigation permits to or enter into a lease agreement with any individual person or group of persons in respect of that commonage;
- (3) The Municipal Manager shall lease the commonage as a unit to a commonage management committee established in terms of subsection (1) for a period not exceeding 9 years and eleven months under such conditions as determined by the Council;
- (4) The commonage management committee must sub-let grazing camps or irrigation land for farming activities to specific interest groups and or farmers recognised by that commonage management committee in respect of the specific categories of users and farmers identified in sections 11 or 12 for a period of not less than one year but not exceeding five years.
- (5) The original lease or rent agreement mentioned in subsection (4) must be handed to the Municipal Manager for safekeeping.
- (6) The lessee of a camp, plot, or land on the commonage shall not sublease such camp land or field.
- (7) The lease agreements contemplated in subsection (4) and the agreements contemplated in subsection (6) shall not lapse when the commonage management committee ceases to exist. In such event the municipal manager must forthwith facilitate the election of a new commonage management committee in terms of Annexure A to take over the powers, functions, assets, liabilities and budget of the previous commonage management committee.

Functions of the commonage management committee

6. The commonage management committee should serve as an advisory body, or in its absence, the Municipal Manager or nominated municipal official must: —
 - (1) Divide each piece of land reserved as commonage in terms of section 3, in separate camps suitable for the grazing of animals, gardening plots, or irrigational land allocating a number to each camp, garden plot and irrigational land;
 - (2) Provide, in each camp, plot or irrigational land in consultation with and assistance of the Department of Agriculture such facilities as may be necessary for the maintenance of animals, gardening or irrigation in that camp plot or land;
 - (3) Compile proper maps of each piece of land reserved as part of the commonage, indicating at least the boundaries of camps, plots, gates and waterholes;
 - (4) Establish and maintain the following:-
 - (a) A separate budget for the commonage;
 - (b) A commonage management plan linked to the Municipal Integrated Development Plan, and
 - (c) A register of all registered animals kept on municipal commonages.
 - (5) Allocate the animals of each permit holder, lessee or renter to a specific camp or camps and notify such permit holder accordingly;
 - (6) Ensure that the necessary infrastructure (fences, water, roads etc) is in place before any permit is issued or lease or rental agreements are entered into;
 - (7) Ensure that the minimum water requirements as set out in Annexure B are met, and in the event where available water for grazing animals falls below the minimum requirements, the Municipality will support commonage users to restore the recommended levels subject to the availability of funds and resources.
 - (8) Ensure that leases or rental agreements are fair and fully understood by the lessee or renter
 - (9) Ensure that the Municipality, permit holders, lessees and renters adhere to the commonage management plan.
 - (10) Ensure that commonages are accessible to persons registered as indigent in terms of the municipality's indigent policy and endeavour to terminate as soon as possible any leases or users agreements with any institutions or persons other than registered indigent persons or the commonage management committee;
 - (11) Develop and implement a proper program of rotation of grazing on land reserved as commonage by the Municipality; and
 - (12) Keep proper records, open for public inspection, regarding-
 - (i) all permit or lease holders or renters;
 - (ii) dates of expiry of all permits;
 - (iii) payments or exemptions of payment of all permit holders, and any other matter which, in the opinion of the Municipal Manager, needs to be recorded.

Grazing permit required to graze animals on commonage

7. (1) A person shall not graze animals on the commonage of the Municipality, unless;
 - (a) he is the holder of a grazing permit issued by the Municipal Manager in consultation with the Commonage Management Committee, in respect of a category 1 user as identified in section 10, subject to the conditions of such permit stipulating the camp number in the commonage and the number and kind of animals to be kept in the camp;

- (b) he has paid the applicable fees, determined by the Municipality in respect of the period for which the grazing permit was issued.
- (2) A permit holder may partly or wholly be exempted from the payment of such commonage fees in terms of the indigent policy of the Municipality.

Application for and issue of grazing permit

8. (1) An application for a grazing permit by a category 1 user as identified in section 12 must -
 - (a) be directed to the Municipal Manager
 - (b) be on the prescribed form made available by the Municipality for this purpose;
 - (c) contain adequate proof that the applicant is a South African citizen and a permanent resident within the area of jurisdiction of the Municipality; and
 - (d) contain such further particulars as the Municipality may require.
- (2) When considering an application, the commonage management committee together with Municipal Manager must take into account the availability and condition of land in the commonage of the Municipality to accommodate the required number of animals for which application is made;
- (3) After due consideration of the application, the commonage management committee together with the Municipal Manager must -
 - (a) issue the permit as applied for by the applicant;
 - (b) issue a permit for a lesser number of animals than applied for; or
 - (c) give written notification to the applicant that his or her application was unsuccessful and state the reasons thereof.
- (4) An aggrieved person may in terms of section 62(4)(b) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), appeal to the Municipality against a finding of the commonage management committee and Municipal Manager.
- (5) A permit for the grazing of animals on the municipal commonage is —
 - (a) valid for not less than one year or more than 5 years and all permits shall lapse on the 30th June of the year of termination;
 - (b) subject to the conditions set out in the permit, and;
 - (c) subject to prior payment of the applicable fees determined by the Municipality.
- (6) The Municipal Manager in consultation with the Commonage Management Committee or designated official may withdraw a permit for the grazing of animals on the municipal commonage if the permit holder contravenes or fails to—
 - (a) comply with a condition subject to which the permit was issued;
 - (b) comply with any provision of this By-law;
 - (c) comply with a lawful direction by the Municipal Manager or of the veterinary surgeon appointed by the Municipality, or
 - (d) pay the applicable fees as determined by Council within 30 days after becoming due,
 Provided a permit holder had been given a 14-day notice to comply or provide reasons why his permit should not be withdrawn.
- (7) A permit to graze animals on the commonage of the Municipality is not transferable and may not be subleased.

Management and Maintenance of Commonage

9. (1) The Municipal Manager is responsible for the proper management and maintenance of all land, infrastructure and equipment forming part of the commonage.
- (2) The Municipal Manger must register and keep record of all animals kept on the commonage in terms of a valid permit or lease or rental agreement.
- (2) The Municipality has the right to gather all animals on the commonage from time to time to ascertain if the animals are registered with the Municipality. All animals, which are not registered, will be impounded.
- (3) It is the owner's responsibility to mark and register his animals.

Appointment of Municipal Commonage Manager

10. The Municipality may appoint a commonage- manager with agricultural-, business- and communication skills on a performance based fixed term contract as contemplated in section 57 of the Local Government: Municipal Systems Act, Act, 2000 (Act No. 32 of 2000) or any suitable person or official to fulfil the functions prescribed by the Municipal Manager.

Categories of commonage users and pasture farming

11. Only a person or farmer falling within one of the following categories may obtain a grazing permit from the municipality or commonage management committee or enter into a livestock farming agreement with the commonage management committee for a period not less than one year but not exceeding five years:-

- (1) Category 1 user consisting of:-
 - (a) new entrants into the commonage farming system;
 - (b) subsistence or indigent users using commonage land to supplement income but are not able to graduate to commercial farming.
 - (c) Minimum requirements for a person to qualify as category 1 user:-
 - (i) be a registered owner of animals;
 - (ii) must be resident in the town owning the commonage
 - (iii) must obtain an annual grazing permit from the commonage management committee or municipality;
 - (iv) must have a maximum number of 5 cattle, or 30 sheep or 30 goats or a combination of animals equal to 5 cattle as determined by Department of Agriculture.
- (2) Category 2 user consisting of farmers:-
 - (a) sharing a piece of the commonage with a maximum number of 4 other commonage farmers in terms of a lease agreement with the commonage management committee, and
 - (b) having at least 5 cattle, or 30 sheep or 30 goats or a combination of animals that is equivalent to 5 cattle; but not more than 15 cattle, or 90 sheep or 90 goats or a combination that is equivalent to 15 cattle.
- (3) Category 3 users consisting of farmers:-
 - (a) renting or leasing his or her own piece of land from the commonage management committee, and
 - (b) having at least 15 cattle, or 90 sheep or 90 goats or a combination of animals equal to 15 cattle but not more than 30 cattle, or 180 sheep or 180 goats or a combination of animals equal to 30 cattle;
- (4) Any farmer with more livestock than mentioned in subsection (3)(b) must be assisted by the Provincial Land Reform Office to purchase own land not forming part of the commonage.

Categories of farmers and irrigation farming

12. Only a farmer falling within one of the following categories may enter into an irrigation farming agreement with the commonage management committee for a period not less than one year but not exceeding five years:-
 - (1) Category 1 farmers consisting of farmers:-
 - (a) belonging to a farming co-operative;
 - (b) who have a constitution approved by the municipality or commonage management committee, and
 - (c) with a maximum allocation of 3ha irrigational land.
 - (2) Category 2 farmers consisting of farmers:-
 - (a) who have been allocated not less than 3ha and not more than 10ha irrigational land for personal use, and
 - (b) with a rental agreement signed with the municipality or commonage management committee.
 - (3) Any farmer with more than 10ha irrigational land must be assisted by the Provincial Land Reform Office to purchase own land not forming part of the commonage.

Prevention of Veld Fires

13. The Municipal Manager or Fire Protection Association established in terms of the National Veld and Forest Fires Act, 1998 (Act No. 101 of 1998) must provide a firebreak to a permit holder, lessee or renter.

Prohibited Actions

14.
 - (1) A person is not allowed to keep any animal in any residential area or on the boundaries thereof
 - (2) A person is not allowed to keep a pig on the commonage in any place other than in an enclosure or cage as approved by the Municipal Manager;
 - (3) A person is not allowed to keep on the commonage any animal of which he is not the bona fide owner;
 - (4) A person is not allowed to kill and or slaughter any animal on the commonage, save for the purpose of disposing of the carcass of a dead animal.
 - (5) A person is not allowed in, on or at any of the Municipality's water resources without prior written approval from the Municipality;
 - (6) A person shall not erect any hut, shelter, kraal, habitation or structure of any kind nor occupy, camp or squat on any portion of the commonage or in any street, or road, thoroughfare or public place without the prior written consent of the Municipality;
 - (7) A person shall not without prior permission of the Municipality, accumulate, dump or deposit or cause to be accumulated, dump or deposited on any portion of the commonage any scrap or waste;
 - (8) A person shall not on the commonage dig or remove soil, clay, sand, gravel or boulders without a valid and current permit issued by the municipality;
 - (9) A person shall not make bricks, or erect brick-, lime - or charcoal kilns, on the any land within the municipal area, or on land under control of the municipality, without prior written consent of the Municipality, except on land denoted for such purposes in terms of an approved spatial development plan and zoning scheme and further subject to payment of the fees determined by municipality;

- (10) A person shall not cut, damage, burn, destroy, gather or remove any plants, shrubs, trees, timber, firewood, brushwood, manure or any grass growing or being upon any portion of grazing camps on the commonage without prior written permission of the Municipality;
- (11) A person shall not interfere with or cause damage to any fence, gate, drinking trough, water tap or other appliance or thing, or set fire to the pasture or any bush, tree, shrub on the commonage;
- (12) A person shall not make use of any road over the commonage other than such roads as shall be allowed open by the municipality from time to time;
- (13) A person shall not deposit or in any way leave any poison for whatever purpose on the commonage without the written permission of the municipality;
- (14) The municipality may cause traps to be set for vermin on the commonage and any person interfering with or damaging such traps in any way or letting loose or removing or causing to be loosened or removed any vermin from such traps or in any way disposing of any bodies from such a trap without the prior approval of the municipality, shall be guilty of an offence;
- (15) A person shall not kill, catch, capture, hunt, remove or attempt to kill, any game on the commonage;
- (16) A person shall not set traps of whatsoever description on the commonage without the prior written consent of the municipality;
- (17) A person shall not remove any bees, hives or honey from the commonage without the written permission of the Municipality;
- (18) A person is not allowed to make an open fire on the commonage, unless it is for the purpose of making or maintaining a fire break.
- (19) A person shall not hunt, shoot, catch, disturb or kill any wild bird on the commonage or destroy or disturb the nest of any wild bird, nor shall any person remove the eggs or young thereof from such nest, and
- (20) If the Municipality is of the opinion that it is in the public interest, it may, for such period and subject to such conditions as it may deem fit, exempt any person, group or category of persons in writing from compliance with any prohibited action in terms of this section.

Liability

15. The permit holder, lessee or renter shall be liable for:-

- (1) Any damage or claims, which originate from damage caused by his animal or animals outside the commonage, and.
- (2) Any damage to or loss of the infrastructure or installations on a grazing camp, irrigation field or plot on a commonage at the expiry of the permit or lease agreement.
- (3) Any damages resulting from non compliance of the conditions of the permit.

Penalties

16. (1) A person who contravenes or fails to comply with any provision of this By-law or any requirement, condition hereunder or to pay the prescribed commonage fees due in terms of this by-law shall be guilty of an offence.
- (2) A person convicted of an offence in terms of subsection (1) shall be liable to a fine or to imprisonment or to both a fine and such imprisonment.

Transitional Arrangements

17. Any permission obtained, right granted, condition imposed, activity permitted or anything done under a repealed law, shall be deemed to have been obtained, granted, imposed, permitted or done under the corresponding provision (if any) of this By-law, as the case may be.

Repeal of by-laws

18. Any by-laws relating to commonages adopted by the Municipality or any municipality now comprising an administrative unit of the Municipality is repealed from the date of promulgation of these by-laws.

Short title

19. These by- laws shall be called the Municipal Commonage By - Law, 201 ...

ANNEXURE A

Commonage Management Committee Structure

1. The Municipal Manager must facilitate the establishment of interest groups of commonage users in each town to form interest groups representative of all like-minded users who must develop a constitution, ground rules, and an informed leadership structure who will manage the group's production and financial affairs positively;
2. Each interest group must in consultation with the Department of Agriculture develop and maintain a management plan for the respective enterprises of that interest group;
3. Two members of an interest group should be elected to a Commonage Management Committee;
4. The Commonage Management Committee should elect three or four representatives (or one each from the interest groups) to the Municipal Commonage Management Committee;
5. Each Commonage Management Committee must in consultation with the Department of Agriculture develop and maintain an overall management plan for its area, and

- 6 The Municipal Commonage Committee is accountable for all lease agreements, commonage management plans, maintenance of assets, collecting of rentals from the interest groups and the payment thereof to the Municipality.

ANNEXURE "B"

Daily water requirements of grazing animals

Animal	Age	Weight kg	Condition	Water requirements litres per day
Cattle	4 weeks	51	growing	0.3-5.7
	8 weeks	69	growing	5-7
	12 weeks	93	growing	8-9
	16 weeks	119	growing	11-13
	20 weeks	148	growing	15-17
	26 weeks	189	growing	17-23
	60 weeks	354	growing	23-30
	84 weeks	464	pregnant	30-38
	1-2 months	464-545	fattening	30-34
	2-8 months	545-726	lactating	39-95
Pigs		14	growing	1-4
		27-36	growing	2.6-4.5
		36-57	growing	4.0-7.5
		91-180	maintenance	5.7-13
		91-180	pregnant	15-19
Sheep and Goats		9	growing	1.9
		23	growing	1.5
		68-91	grazing	1.9-5.7
		68-91	grazing (salty)	8
		68-91	hay and grain	0.4-3.0
Horses		68-91	good pasture	<1.9
				45

[NO. 152 OF 2010]

NOTICE IN TERMS OF SECTION 14(2)(b)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000: PUBLICATION: STANDARD CONTROL OF COLLECTIONS BY-LAW.

- [1.] I, MJ Zwane, Member of the Executive Council responsible for Cooperative Governance Traditional Affairs and Human Settlements in the Free State Province in terms of Section 14(2)(b) of the Local Government: Municipal Structures Act, 2000 (Act 32 of 2000) hereby publish standard draft by-laws as set out in the Schedule hereto for public comment.
- [2.] The public and interested parties are invited to submit comments in writing on these proposed standard draft by-laws by not later than 30 days from the date of publication of this notice, to:-

The Chief Director
 Systems And Capacity Building
 Department of Cooperative Governance
 and Traditional Affairs
 Local Government Branch
 PO Box 211
 BLOEMFONTEIN
 9301

Comments may also be submitted by facsimile to number 086 698 8906 or by e-mail to

chohne@lgh.f.sgov.za

SCHEDULE

CONTROL OF COLLECTIONS BY-LAWS

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- 2. Collections
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- 4. Offences and penalties
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Definitions

- 1. (1) In these by-laws, unless the context indicates otherwise indicates:
 - "Council"** means the municipal council of the Local Municipality in which the executive and legislative authority of the municipality is vested, and which is the decision making body of the municipality, and its delegates;
 - "collection"** means the collection of money, goods or contributions from the public in public places or by means of visits to residential or business places;
 - "municipality"** means the Local Municipality, and when referred to as-
 - (a) an entity, means Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and
 - (b) a geographic area, means the municipal area of the Local Municipality as determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);
 - "public place"** means any street, road, thoroughfare, park, square or open space.
- (2) In these by-laws, unless the context otherwise indicates, words and expressions denoting the singular shall include the plural and vice versa, words and expressions denoting the male sex shall include the female sex and vice versa and reference to a natural person shall include a legal person and vice versa.

Collections

- 2. (1) No person shall within the Municipality be engaged in, attempt to, or permit or in any way be concerned with the conducting of a collection, without the prior written consent of the Council.
- (2) Any application for the consent of the Council in terms of subsection (1) shall be made and submitted to the Council in writing, and shall clearly set out:
 - (a) the full name and address and occupation of the person to be responsible, or of persons to be jointly responsible for such collection and the name of the organisation concerned;
 - (b) the object for which such collection is to be made or the fund to which the proceeds thereof are to be devoted and whether such object or fund is local to the Municipality;
 - (c) in the event that the applicant is the local branch of a parent organisation, what percentage, if any, will be paid over to the parent organisation;
 - (d) the day or days on which and the hours between which such collection is to be made;
 - (e) the area where such collection is to be made;
 - (f) whether the gross amount of the proceeds, without any deduction, is to be devoted to the object or fund in question;
 - (g) the full name and address of the person who will supervise such collection; and
 - (h) whether contributions in cash will be recorded on lists or will be received in receptacles.
- (3) Where such contributions are to be received in receptacles, such receptacles shall be sealed, and each receptacle shall bear a label indicating the object or the fund to which the proceeds shall be devoted.
- (4) Where contributions are to be recorded on lists, such lists shall be endorsed by the Council and shall clearly set out:
 - (a) that such collection is being made with the consent of the Council;
 - (b) the object or the fund to which the proceeds shall be devoted;
 - (c) by whom such collection is being made or conducted and
 - (d) the full name and address of the person supervising such collection.

- (5) Where contributions are to be received or recorded in a manner other than that prescribed in subsections (3) or (4), the consent of the Council thereto shall first be obtained.

Age of the persons to be used for collections

3. No person under the age of 16 years shall be employed or engaged in any collection and any person who or any organization which has obtained the written permission of the Council to make such collection shall be responsible for ensuring that the provisions of this section are strictly complied with.

Offences and penalties

4. (1) Any person contravening or failing to comply with any of the provisions of these by-laws is guilty of an offence and must upon conviction by a court be liable to a fine or imprisonment or both a fine as well as imprisonment, or such other fine or imprisonment which the Minister of Justice may from time to time determine in terms of the provisions of section 92 of the Magistrate's Courts Act, 1944 (Act No 32 of 1944).
- (2) Any expense incurred by the Council as a result of a contravention of these by-laws or in the doing of anything which a person was directed to do under these by-laws and which he or she failed to do, may be recovered by the Council from the person who committed the contravention or who failed to do such thing.

Repeal

5. Any by-laws relating to the Control of Collections adopted by the municipality or any municipality now comprising an administrative unit of the municipality is repealed from the date of promulgation of these by-laws.

Short title

6. These by-laws are called the by-laws relating to Control of Collections, 20...

[NO 153 OF 2010]

NOTICE IN TERMS OF SECTION 14(2)(b)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000: PUBLICATION: STANDARD CONTROL OF PUBLIC NUISANCES BY-LAW

- [1.] I, MJ Zwane, Member of the Executive Council responsible for Cooperative Governance Traditional Affairs and Human Settlements in the Free State Province in terms of Section 14(2)(b) of the Local Government: Municipal Structures Act, 2000 (Act No. 32 of 2000) hereby publish standard draft by-laws as set out in the Schedule hereto for public comment.
- [2.] The public and interested parties are invited to submit comments in writing on these proposed standard draft by-laws by not later than 30 days from the date of publication of this notice, to:-

The Chief Director
Systems And Capacity Building
Department of Cooperative Governance
and Traditional Affairs
Local Government Branch
PO Box 211
BLOEMFONTEIN
9301

Comments may also be submitted by facsimile to number 086 698 8906 or by e-mail to

chohne@lgh.f.sgov.za

SCHEDULE

CONTROL OF PUBLIC NUISANCES BY-LAW

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Definitions

1. In this By-law, unless the context otherwise indicates:
- "building"** means any enclosed area of a structure owned or leased or administered by the Municipality;
- "graffiti"** means any drawing, figure inscription, symbol, or other marking which is scratched, painted, drawn in pen or marker or placed by some other permanent or semi-permanent means upon streets, public or private view without the express permission or consent of the property owner;
- "health Officer"** means an individual who carries on , and is registered in terms of legislation to carry on , an occupation which involves the provision of health care, health advice or treatment for the physical or mental health or for the well-being of individuals.
- "local community"** means community as defined in section 1 of the Local Government: Municipal Systems Act 32 Of 2002;
- "Municipal area"** means Municipal area determined in terms of the Local Government: Municipal Demarcation Act 27 of 1998;
- "Municipal Manager"** means the Municipal Manager appointed as such in terms of Section 82 of the Municipal Structures Act 117 of 1998 as amended;
- "notice"** means notice in writing, and "notifying" and "notified" shall have corresponding meanings;
- "public nuisance"** means a thing, act, occupation, condition or use of property which shall continue for such length of time as to:
- annoy, injure or endanger the comfort, health, repose or safety of the public
 - in any way render the public insecure in life or in the use of the property;
 - greatly offend the public moral decency;
 - unlawfully and substantially interfere with; obstruct or render dangerous for passage any street, ally, road, navigable body of water or other public way;
- "smoking"** means using, carrying or possessing a lighted cigarette, cigar, pipe or other lighted smoking equipment;
- "vehicle"** means any self-propelled, enclosed car owned or leased by the Municipality, including those vehicles contracted for passenger transportation services;

Interpretation

2. When interpreting a provision of this By-law, the interpreter must prefer any reasonable interpretation of the provisions that is consistent with the spirit and object of this By-law over any alternative interpretation that is inconsistent thereto.

Purpose of this by-law

3. This By-law purports to create a safe, healthy and peaceful living environment in which people exercise their Constitutional rights responsibly, respect the rights of others and uphold high moral values, thus fulfilling the primary objects of this By-law, viz:
- To give effect to the Municipality's constitutional mandate to promote a safe and a healthy environment as contained in section 152 (d) of the Constitution of the Republic of South Africa, 1996:
 - By regulating public nuisances likely to affect peace and safety, and
 - by prohibiting all public nuisances having negative impact on health,
 - To give effect to the Municipality's moral duty to protect and uphold Communities good moral values by outlawing all immoral and indecent practices.

Application of the By-Law

4. This By-law applies to:
- The local community as contemplated in Section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and
 - Legal personae existent or incorporated within the Municipal area.

Public nuisance affecting health

5. The following acts, omissions, places, conditions and things are hereby specifically declared to be prohibited as public health nuisances, but may not to be construed to exclude any other health nuisance; within the definition of any applicable law-
- All decayed, harmfully contaminated or unwholesome food or drink sold or offered for sale to the public;
 - Carcasses of animals, birds or fowls not buried or otherwise disposed of in a sanitary manner within twenty-four hours after death;
 - Accumulation of decayed animals or vegetable matter, trash, rubbish , rotting lumber, bedding, packing material, scrap metal or any material whatsoever in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed;
 - Stagnant water in which mosquitoes, flies or other insects may breed;
 - Uncovered refuse bins;
 - Noxious weeds and other rank growth or vegetation,
 - The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust in such quantities as to endanger the health of persons or ordinary sensibilities or to threaten or cause substantial injury to property;

- (8) The pollution of any public well or cistern, stream, lake, canal or body of water by sewerage, industrial wastes or other substances;
- (9) Any use of property, substances or things within the Municipal area, emitting or causing any foul, offensive, nauseous, noxious, or disagreeable odours, or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the Municipality;
- (10) All abandoned wells not securely covered or secured from public use, and
- (11) All animals running at large.

Public nuisance offending moral decency

6. The following acts, places, conditions and things are hereby specially declared to be prohibited as public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisance offending public morals and decency coming within the definition of any other applicable law:
 - (1) all disorderly houses, houses of ill fame, illegal gambling houses and buildings or structures kept for or resorted to for the purposes of prostitution, sexual intercourse or gambling in contravention of any law;
 - (2) all gambling devices and slot machines not operated in accordance with the law;
 - (3) all places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, or manufactured, without a permit or license as provided for in law;
 - (4) any place or premises within the area of the Municipality where laws relating to the public health, safety, peace, morals or welfare, are openly, continuously, repeatedly and intentionally violated;
 - (5) any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of any laws;
 - (6) consumption of any intoxicating liquor or fermented malt beverages while in or upon any public street, alley, sidewalk or public place;
 - (7) defecating or urinating outside of designated sanitary facilities, upon sidewalk, street, alley public parking lot, park, playground, cemetery, or other public area or upon a private property in open view of the public or in the halls, rooms, stairway, or elevators of public or commercial building or indecently exposing his or her person, and
 - (8) smoking in any of the Municipality's vehicles, buildings or areas designated as non-smoking zone,

Public nuisance affecting peace and safety

7. The following acts, place, conditions and things are hereby declared to be and are outlawed as public nuisances affecting peace and safety, but this enumeration may not be construed to exclude other nuisances affecting public peace or safety coming within the definition of any other applicable laws:
 - (1) signs and billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated as to endanger the public safety;
 - (2) all buildings erected, repaired or altered in violation of the provision of the building regulations relating to materials and manner of construction of buildings and structures within the Municipality;
 - (3) all unauthorised signs, signals, markings or devices whose purpose is or may be mistaken as official traffic control devices placed or maintained upon or in view of any Municipal road;
 - (4) all trees, billboards or obstructions which prevent persons driving vehicles on public streets and Municipal roads from obtaining a clear view of traffic when approaching an intersection or pedestrian crossing;
 - (5) all use or display of fireworks except as approved by Council resolution
 - (6) unnecessary discharging of firearms, shooting or discharging a bow, crossbow or similar devices which propels or projects an arrow or similar projectile within the area of the municipality;
 - (7) all building structures so old, dilapidated or out of repairs as to be dangerous, unsafe, unsanitary or otherwise unfit for human use;
 - (8) all loud, discordant and unnecessary noises or vibration of any kind;
 - (9) the keeping or harbouring of any animal or fowl which by frequent or habitual howling, yelping, barking, crowing or making of other noises greatly annoys or disturbs a neighbourhood or any considerable number of persons within the area of the Municipality;
 - (10) all obstructions of streets, sidewalks or municipal roads and all excavations in or under the same, except as permitted by the by-laws of the Municipality or which, although made in accordance with such bylaws, are kept or maintained for an unreasonable length of time after the purpose therefore has been accomplished,
 - (11) all open and unguarded pits, wells, excavations or unused basements freely accessible from any public street, alley or sidewalks,
 - (12) all abandoned refrigerators from which the doors and other covers have not been removed or which are equipped with a device for opening from inside;
 - (13) any unauthorised or unlawful use of property abutting on a public street, alley or sidewalks or of a public street, alley or sidewalks which cause large crowds of people to gather, obstructing traffic and free use of the streets or sidewalks;
 - (14) repeated or continuous violations of the by-laws of the Council or laws of the Republic relating to the storage of flammable liquids;
 - (15) discarding or leaving outside of any building or dwelling in a place accessible to children any box or container of any kind which has an airtight door or lock which may not be realized for opening from inside, without first removing the door lock.

Public nuisance affecting property and property usage

8. Property owners, occupants or persons authorized to use property:
- 1) must maintain in good repair, painted or covered with exterior siding material intended for that use by the manufacturer for purposes of preservation and appearance, the exterior of every structure or accessory structure, residential and non-residential, including fences
 - 2) must maintain, free of broken or missing siding, shingles or exterior woodwork, crumbling stone or bricks, excessive chipped, peeling, or lack of paint, missing, broken or deteriorating steps, porches, handrails and guardrails or any other condition reflective of deterioration and or inadequate maintenance or as may tend to depreciate property values in the area or create a nuisance or hazard;
 - 3) may not allow on any property any debris or condition, including, but not limited to woods, bricks, concrete, rubble, or other building material, scrap metal, tree limbs or bush, tree stumps with a height greater than their diameter, diseased or dead trees or other yard waste, household refuse not properly contained or stored, inoperable machinery or parts thereof (except when housed inside out of public view), refrigerators, stoves, washing machines, dryers, or other appliance, water heaters, bedsprings or other furniture not intended for exterior use by the manufacturer and used or stored on open porches or yards, rutted lawns on driveways or any other unsightly conditions as may tend to depreciate property values in the area or create a nuisance, hazard or eyesore,
 - 4) may not store outdoors or allow the outside storage of firewood on any property used or zoned for residential use, except as permitted in this paragraph. Firewood may not be stored in the front yard of such property or within the setback, except that firewood maybe temporarily stored for a period not exceeding fourteen days of delivery to the property. All firewood may be stacked no higher than the upper-most horizontal portion of the fence and infestation of mice, rats, other rodents or insects may not be permitted under or near the stack,
 - 5) may not allow any brush, debris or refuse from the processing of firewood to remain anywhere on the property;
 - 6) shall be responsible for the extermination of any insects, rodents, pigeons or pests when the infection is caused by their failure to maintain the building in the pests -proof condition.

Defacement or damage of property by graffiti

9. Graffiti is hereby declared to be a public nuisance devaluing property and :
- (1) any person who may affix graffiti to any property is liable for the cost of removing or covering such graffiti in addition to any fine imposed for violating this section;
 - (2) parents of any minor child who affixed graffiti may be held liable for the cost of removing or covering the said graffiti;
 - (3) upon the discovery of the graffiti the owner or lawful occupant of the property shall:
 - (a) notify the Council before removing or covering such graffiti
 - (b) cover or remove the graffiti within fifteen days in compliance with written notice served upon them by the Council to remove or cover such graffiti
 - (4) In the event of the owner or lawful occupant of the property failing to comply with the Council notice to cover or remove the graffiti, the Council shall have the graffiti covered or removed and all costs, fees and expenses will be assessed to the said owner or lawful occupant,

Damage to public property

10. The following acts constitute damage to public property and are declared public nuisance:
- (1) breaking, soiling, defacing, injuring or damaging any guidepost, signs, street lamp or post, traffic signs or signal, fountain, statue, monument or other ornamental structure within any public street, alley, park, cemetery or other public place;
 - (2) breaking, soiling, defacing or damaging any part of any public building or any public property or equipment,
 - (3) opening, removing, operating or otherwise tampering with any Municipal property or equipment, including but not limited by way of emuneration, to manholes and covers, pumps, storm grates, sewers and mains, water valves and stop shut-off boxes, meters, vehicles, and attachment thereto, barricades and signal lighting for construction and emergency purposes ,
 - (4) painting or posting any bill, notice, picture, advertisement upon any public building, curb stone, crosswalk, gutter, street, sidewalk, hydrant, lamp post and bridge, and
 - (5) tampering with, breaking, cutting, taking down or disarranging any electric light pole, fire or alarm box, or any wire cord,, lamp or other apparatus used in operating or maintaining any electric light or firearm, without authority to do so or, post any bills or posters of any kind whatsoever upon any such poles or posts within the area of the Council.
 - (6) This section does not apply to duly authorized employees or agents of the Municipality or to a person authorized by the permit issued by the Council, or to any person possessing written authorisation from the Municipal Manager.

Advertisement on private property without consent

11. A person may not post paper or any written or painted bill, notice or advertisement on any part of the outer walls of any building without first having obtained the consent of the owner thereof.

Procedure on receipt of complaint

12. Whenever complaint is made to the Municipal Manager that a public nuisance exists within the Municipal area, the Municipal Manager shall notify the police, health Officer or building Inspector who shall forthwith inspect the premises and make a written report of his findings to the Municipal Manager, Whenever practicable, the Inspecting Officer shall cause photographs to be made of the premises and shall file the same.

Summary abatement

13. (1) If the inspecting officer determines that a public nuisance exists on private property and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Municipal Manager may direct that a notice be served on the owner or, if the owner cannot be found on the occupant or person causing, permitting or maintaining such nuisance and to post a copy of said notice on the premises. Such notice shall direct the owner, occupant or person causing, permitting or maintaining such nuisance to abate or remove such nuisance within twenty-four hours and shall state that unless such nuisance is so abated, the Municipality will cause the same to be abated and will charge the cost thereof to the owner, occupant or person causing, permitting or maintaining the same, as the case may be.
- (2) If the nuisance is not abated within the time provided or if the owner, occupant or person causing the nuisance cannot be found, the health Officer, in case of health nuisance, and the police, in other cases, must cause the abatement or removal of such public nuisance.

Repeal

14. Any by-laws relating to the Control of Public Nuisance adopted by the municipality or any municipality now comprising an administrative unit of the municipality is repealed from the date of promulgation of these by-laws.

Short title and commencement

15. These by-laws are called the Control of Public Nuisance By-laws, 201...

[NO. 154 OF 2010]

NOTICE IN TERMS OF SECTION 14(2)(b)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000: PUBLICATION: STANDARD CONTROL OF STREET VENDORS, PEDDLERS OR HAWKERS BY-LAW

- [1.] I, MJ Zwane, Member of the Executive Council responsible for Cooperative Governance Traditional Affairs and Human Settlements in the Free State Province in terms of Section 14(2)(b) of the Local Government: Municipal Structures Act, 2000 (Act No. 32 of 2000) hereby publish standard draft by-laws as set out in the Schedule hereto for public comment.
- [2.] The public and interested parties are invited to submit comments in writing on these proposed standard draft by-laws by not later than 30 days from the date of publication of this notice, to:-

The Chief Director
Systems And Capacity Building
Department of Cooperative Governance
and Traditional Affairs
Local Government Branch
PO Box 211
BLOEMFONTEIN
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Comments may also be submitted by facsimile to number 086 698 8906 or by e-mail to

chohne@lgh.f.sgov.za

SCHEDULE

CONTROL OF STREET VENDORS, PEDDLERS OR HAWKERS BY-LAW

Definitions

1. In this by-law, unless the context indicates otherwise, any expression to which a meaning has been assigned in the Business Act, 1991 (Act No. 71 of 1991) and the Road Traffic Act, 1989 (Act No. 29 of 1989) shall, when used in these regulations, have the meaning thus assigned and –
- "council"** means theCouncil.
- "street vendor, peddler or hawker"** means any person carrying on business, whether as principal, employee or agent, by selling any goods or services –
- (i) which is conveyed from place to place, whether by vehicle or otherwise;
 - (ii) on a public road or at any other place accessible to the public;
 - (iii) in, on or from a movable structure or stationary vehicle;
- "nuisance"** means any conduct which brings about or may bring about a state of affairs or condition which constitutes a health risk or a source of danger to human lives or property or which interferes with persons ordinary comfort, convenience, peace or quiet;
- "officer"** means –
- (i) a traffic officer appointed under section 3 of the Road Traffic Act, 1989 (Act No. 29 of 1989);
 - (ii) a member of the Force as defined in section 1(1) of the Police Act, 1958 (Act No. 7 of 1958), or
 - (iii) a peace officer contemplated by section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); "public place" includes any street, road, thoroughfare, sanitary passage, square or open space shown on a general plan of a township or settlement, filed in any deeds' registry or surveyor-general's office, and all land (other than erven shown on the general plan) the control whereof is vested, to the entire exclusion of the owner, in a local authority or to which the owners of erven in the township have a common right;
- "public road"** means any road, street, thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or a section thereof has a right of access and includes –
- (i) the verge of any such road, street or thoroughfare;
 - (ii) any bridge, ferry or drift traversed by any such road, street or thoroughfare, and
 - (iii) any other work or object forming part of or connected with or belong to such road, street or thoroughfare, "sell" includes to prepare, process, store, offer or display for sale; "sidewalk" means that portion of a verge intended for the exclusive use of pedestrians;
- "the Act"** means the Business Act, 1991 (Act No. 71 of 1991);
- "verge"** means that portion of the road, street or thoroughfare which is not the roadway.

Carrying on of business

2. Subject to the provisions of this by-law and other applicable legislation, a street vendor, peddler or hawker may carry on his business within the municipal area of the Council.

Prohibited business areas

3. Subject to the provisions of sections 2 and 4 no person shall carry on business as street vendor, peddler or hawker –
- (1) in a garden or park to which the public has a right of access;
 - (2) on a verge contiguous to –
 - (a) a building belonging to or occupied solely by the State or the Council;
 - (b) a church or other place of worship;
 - (3) in a building declared to be a national monument in terms of the National Monuments Act, 1969 (Act No. 28 of 1969);
 - (4) in an area declared by the Council as a prohibited business area in terms of section 6A(2) of the Act or an area to be declared as such;
 - (5) at a place where –
 - (a) it causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;
 - (b) it causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;
 - (c) it substantially obstructs pedestrians in their use of a sidewalk.
 - (6) on a verge contiguous to a building in which business is being carried on by any person who sells goods of the same nature as or of a similar nature to goods being sold by the street vendor, peddler or hawker concerned, without the consent of that person;
 - (7) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto.

Restricted business areas

4. (1) The Council may by resolution, after compliance mutatis mutandis with the provisions of section 6A(2)(b) up to (h) of the Act, declare any place within the municipal area of the Council to be an area in which the carrying on of the business of street vendor, peddler or hawker may be restricted.

- (2) The Council may within the areas contemplated in sub section 4(1), restrict the carrying on of the business of street vendor, peddler or hawker to specified hours, specified places and specified goods or services.
- (3) The Council may within the areas contemplated in sub section 4(1), by means of resolution:
 - (a) set part and demarcate stands or areas for the purposes of street vendors, peddlers or hawkers on any public road whereof the management or ownership is vested in the Council, or on any other property occupied and controlled by the Council;
 - (b) extend, reduce or disestablish the stand or areas set apart and demarcated as such;
 - (c) let or otherwise allocate stands or areas set apart and demarcated as such, by agreement.
- (4) The Council may within the areas contemplated in sub section 4(1), by means of resolution, after compliance mutatis mutandis with the provisions of section 6A(2)(b) up to (h) of the Act, lease any verge or any portion thereof to the owner or occupier of the contiguous land on the condition that such owner or occupier shall admit a specified number of street vendors, peddlers or hawkers on stands or places designated by such owner or occupier on such verge.
- (5) A person shall carry on the business of street vendor, peddler or hawker on stands or areas contemplated in sub sections 4(3) and 4(4), only if he is in possession of proof that he is hiring such stand or area or that it has otherwise been allocated to him.
- (6) A person shall within the areas as contemplated in sub section 4(1), carry on the business of street vendor, peddler or hawker only during the hours, on the places and with the goods or services as contemplated in sub section 4(2).

Control measures

5. (1) No street vendor, peddler or hawker shall -
 - (a) sleep overnight at his place of business or erect any structure for the purpose of providing shelter, without the prior written approval of the Council;
 - (b) carry on his business in such a manner as to -
 - (i) create a nuisance;
 - (ii) damage or deface the surface of any public road or public place or any other property of the Council;
 - (iii) create a traffic hazard;
 - (c) accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any refuse, scrap or waste material on any land or premises or on any public road or public place, other than in a refuse receptacle approved by the Council.
- (2) Every street vendor, peddler or hawker shall -
 - (a) remove from any public road or public place at the conclusion of trading, all waste, packaging material, stock and equipment of whatever nature which are utilised in connection with such business, unless prior written approval exempting him from this provision, has been given by the Council;
 - (b) carry on his business in such a manner as not to be a danger or threat to public health or public safety;
 - (c) at the request of an officer or an employee of the council, move or remove any goods, receptacle, vehicle or movable structure used for his business.

Removal and impoundment

6. (1) An officer may remove and impound any goods, receptacle, vehicle or movable structure which he reasonably suspects are being used or are intended to be used or have been used in or in connection with the carrying on of a business of a street vendor, peddler or hawker -
 - (a) which he finds at a place where -
 - (i) the carrying on of the business of a street vendor, peddler or hawker is prohibited in terms of regulation 3;
 - (ii) the business of a street vendor, peddler or hawker is being carried on contrary to the provisions of regulation 4.
 - (b) which a street vendor, peddler or hawker has failed or refused to remove from the place after having been requested to do so by an officer or any employee of the Council, or which have been left there or abandoned.
- (2) An officer acting in terms of sub regulation 6.1, shall -
 - (a) issue to a street vendor, peddler or hawker a written proof for any goods, receptacle, vehicle or movable structure so removed and impounded;
 - (b) forthwith deliver any such goods, receptacle, vehicle or movable structure to the Council;
- (3) An officer, the Council or an employee of the Council shall not be liable for any loss or theft of or damage to any goods, receptacle, vehicle or movable structure removed and impounded in terms of these regulations.

Display of approval

7. A street vendor, peddler or hawker shall carry on his person any written approval granted or issued to him by the Council in terms of these regulations and shall on demand show such written approval to an officer or an employee of the Council.

Delegation

8. With the exception of the powers mentioned in regulation 2, 3 and 4, the Council may delegate or assign in writing any power, duty or function imposed by or under these regulations upon the Council, to any person in its employ subject to such conditions as it may deem necessary.

Offences and penalties

9. (1) A person who -
- (a) contravenes any provision of these regulations or fails to comply therewith or with any condition imposed in terms thereof;
 - (b) threatens, resists, interferes with or obstructs any officer or any employee of the Council in the performance of his duties or functions in terms of or under these regulations, or
 - (c) deliberately furnishes false or misleading information to an officer or an employee of the Council,
- shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding three months.
- (2) Any person who, after conviction in terms of these regulations, persists in the conduct or neglect which caused the offence, shall be guilty of a continuing offence and liable to a fine as provided by the Ordinance in respect of every day that he so persists.
- (3) Any expense incurred by the Council as a result of a contravention of these regulations or in the doing of anything which a person was directed to do under these regulations and which he failed to do, may be recovered by the council from the person who committed the contravention or who failed to do such thing.

Repeal

10. Any by-laws relating to Street Vendors, Peddlers and Hawkers adopted by the municipality or any municipality now comprising an administrative unit of the Municipality is repealed from the date of promulgation of these by-laws

Short title

11. This By-law shall be called the Control of Street Vendors, Peddlers and Hawkers By-law, 20...

[NO. 155 OF 2010]**NOTICE IN TERMS OF SECTION 14(2)(b)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000: PUBLICATION: STANDARD DELEGATION OF POWERS BY-LAW**

- [1.] I, MJ Zwane, Member of the Executive Council responsible for Cooperative Governance Traditional Affairs and Human Settlements in the Free State Province in terms of Section 14(2)(b) of the Local Government: Municipal Structures Act, 2000 (Act 32 of 2000) hereby publish standard draft by-laws as set out in the Schedule hereto for public comment.
- [2.] The public and interested parties are invited to submit comments in writing on these proposed standard draft by-laws by not later than 30 days from the date of publication of this notice, to:-

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chohne@lgh.f.sgov.za

SCHEDULE

DELEGATION OF POWERS BY-LAW

Purpose of By-law

The purpose of this by-law is to promote the development of a system of delegation by the municipality to maximise administrative and operational efficiency and to provide for adequate checks and balances in relation thereto.

Definitions

1. In this by-law, words used in the masculine gender include the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates –

'**accounting officer**', in relation to the municipality, means the municipal official referred to in Section 60 of the Local Government : Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

'**chief financial officer**', in relation to the municipality, means the person designated in terms of Section 80(2)(a) of the Local Government : Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

'**council**' means the municipal council of the municipality and includes any committee or staff member thereof acting in terms of a delegated power;

'**councillor**' means a member of the council;

'**day**' means a calendar day, including a Saturday, Sunday and any public holiday;

'**delegating authority**', in relation to the delegation of a power or a duty by a municipal council, means the council or, in relation to the sub-delegation of a power or a duty by another political structure, political office bearer, councillor or staff member, means that political structure, political office bearer, councillor or staff member;

'**delegation**' means the delegation of a power, as envisaged by Section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and includes the delegation of a duty and

'**delegate**' has a corresponding meaning;

'**MFMA**' means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003),

'**municipal manager**' means a person appointed in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

'**Municipal Structures Act**' means the Local Government: Municipal Structures Act 1998(Act No. 117 of 1998);

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

'**municipality**' means the Local Municipality established in terms of Section 12 of the Municipal Structures Act, and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with these by-laws by virtue of a power vested in the municipality and delegated or sub delegated to such political structure, political office bearer, councillor, agent or employee;

'**political office bearer**' in relation to the municipality, means the speaker, executive mayor, mayor, deputy mayor or a member of the executive committee referred to in the Municipal Structures Act;

'**political structure**', in relation to the municipality, means the council or any committee or other collective structure of the municipality that has been elected, designated or appointed in terms of a specific provision of the Municipal Structures Act;

'**reserved power**' includes a power mentioned in Section 160(2) of the Constitution of the Republic of South Africa, 1996 , the power to set tariffs, the decision to enter into a service delivery agreement in terms of Section 76(b) of the Local Government: Municipal Systems Act and to approve or amend the municipality's integrated development plan; and

'**staff**' or '**staff member**' means the employees of the municipality, including the municipal manager.

Development of system of delegation –

2. The council must develop a system of delegation that will maximise administrative and operational efficiency.

Delegation of powers

3. (1) The council shall delegate appropriate powers, except reserved powers, to the appropriate political structure, political office bearer, councillor or staff member so as to give effect to the objects of section 2.

(2) A delegation of power in terms of this section must include an instruction to any political structure, political office bearer, councillor or staff member to perform any of the municipality's duties.

Withdrawal of delegated powers

4. A delegation in terms of section 3 may be withdrawn by the council at any time, provided that -

- (1) reasonable notification is given beforehand, unless the urgency of the matter prevents such notification; and
- (2) the administrative and operational efficiency of the municipality will not be prejudiced.

Requirements for delegation

5. A delegation of power in terms of section 3 must
 - (1) not conflict with the Constitution of the Republic of South Africa, 1996 the Municipal Structures Act or the Municipal Systems Act;
 - (2) be recorded in writing in a resolution adopted by the council;
 - (3) be subject to any limitations, conditions and directions the council may impose;
 - (4) not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and
 - (5) be reviewed when a new council is elected or, if it is a district council, elected and appointed.

Review of delegated power

6. (1) In accordance with the procedures contained in its rules and orders or at the request in writing of at least 25% (one quarter) of the councillors, the council must review any decision taken by a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction referred to in section 3 and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person as a result of such decision.
- (2) Where appropriate, the council may require its executive committee or mayor to review any decision taken by such a political structure, political office bearer, councillor or staff member in consequence of a delegation or instruction given in terms of section 3.

Certain delegations restricted

7. (1) Where the municipality is a type that is entitled to have an executive committee or an executive mayor, the following powers may, within a policy framework determined by the council, only be delegated to such executive committee or executive mayor, as the case may be -
 - (a) decisions to expropriate immovable property or rights in or to immovable property; and
 - (b) the determination or alteration of the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager.
- (2) The accounting officer may not delegate to any political structure or political office bearer any of the powers or duties assigned to the accounting officer in terms of the MFMA.

Referral of matters to delegating authority for decision

8. A political structure, political office bearer, councillor or staff member to whom a power or authority is delegated or sub-delegated a power may, or must, if instructed to do so by the relevant delegating authority, refer a matter to the relevant authority for decision.

Delegations in terms of the MFMA

9. (1) The accounting officer must develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the municipality's financial administration.
- (2) No provision contained in this by-law must be construed as limiting or detracting from the powers and duties of the accounting officer and chief financial officer, respectively, with regard to delegations in terms of the MFMA.

Appeals

10. (1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member in terms of a power or duty delegated or sub delegated by a delegating authority to such political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of appeal and reasons therefore to the municipal manager within 21 (twenty one) days of the date the appellant is notified of such decision.
- (2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in Subsection 10(4).
- (3) The appeal authority must consider the appeal and confirm, vary or revoke the decision, but no variation or revocation of a decision may detract from any rights that may have accrued to any person as a result of the decision.
- (4) If the appeal is against a decision taken by -
 - (a) a staff member other than the municipal manager, then the municipal manager must be the appeal authority;
 - (b) the municipal manager, then the executive committee or executive mayor must be the appeal authority, or if the municipality does not have an executive committee or executive mayor, then the council must be the appeal authority; or
 - (c) a political structure, political office bearer or a councillor -

- (i) then the municipal council shall be the appeal authority where the council comprises less than 15 (fifteen) councillors; or
 - (ii) a committee of councillors who were not involved in the decision and who are appointed by the municipal council for this purpose must be the appeal authority where the council comprises more than 14 (fourteen) councillors.
- (5) An appeal authority must commence with an appeal hearing within 6 (six) weeks of the appellant's submission of written notice of the appeal and must decide the appeal within a period of 14 (fourteen) days calculated from the date of commencement of the appeal hearing.

Duty to report to delegating authorities

11. A political structure, political office bearer, councillor or staff member, to whom a delegating authority has delegated or sub-delegated a power or duty, must report to the delegating authority at such intervals as the delegating authority may require on decisions taken in terms of that delegated or sub-delegated power or duty.

Withdrawal, amendment or lapsing of delegation or sub-delegation

12. The withdrawal, amendment or lapsing of a delegation or sub-delegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or sub-delegation.

Review of delegations

13. (1) Whenever it becomes necessary in terms of section 5(5) to review the municipality's delegations, the municipal manager must submit to the council -
- (a) a report on the existing delegations issued in terms of section 3 by the council and other delegating authorities;
 - (b) recommendations on any changes to the existing delegations which the municipal manager may consider necessary.
- (2) If the municipality has an executive committee or executive mayor, then the municipal manager must submit the report and any recommendations in terms of sub-section (1) to the council through the executive committee or executive mayor, as the case may be.

Delegation or sub-delegation to staff member

14. Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the council in accordance with the system of delegation referred to in section 2.

Register of delegations and sub-delegations

15. The municipal manager shall maintain a register detailing all resolutions adopted by the council concerning delegations made in terms of this by-law. Such details shall include the text of the council resolution, the date when such resolution was adopted and the subject matter of such delegation.

Decisions adopted under delegated power

16. (1) Any report containing a recommendation which, if adopted must constitute a council resolution adopted under delegated power, must contain a reference to the authority for such delegated power.
- (2) The authority for a decision adopted as a result of a delegated power must be quoted in any applicable minute or be endorsed on any document containing such decision.

Regulations

17. The municipality may make regulations not inconsistent with this by-law, prescribing -
- (a) any matter that may or must be prescribed in terms of this by-law; and
 - (b) any matter that may facilitate the application of this by-law.

Repeal of by-laws

18. Any by-laws relating to the delegation of powers adopted by the municipality or any municipal council now comprising an administrative unit of the municipality is repealed from the date of promulgation of this by-law.

Short title

19. This by-law is called the Delegation of Powers By-law, 201..
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NOTICES

PLEASE TAKE NOTE THAT AS FROM 1 NOVEMBER 2010 THE BANKING DETAILS OF THE DEPARTMENT OF THE PREMIER WILL BE AS FOLLOWS:

BANKING DETAILS FOR DEPARTMENT OF THE PREMIER

NEW BANK:	STANDARD BANK
ACCOUNT NAME:	FSPG: DEPARTMENT OF THE PREMIER
ACCOUNT NUMBER:	240 322 029
BRANCH NAME:	BRANDWAG BRANCH
BRANCH CODE:	05 5534 00
REFERENCE NO.:	AS DISCUSSED UNDERNEATH
ACCOUNT HOLDER:	FSPG: DEPT PREMIER
FAX NO.	(051) 405 4396

- NB: FOR CHEQUES PURPOSE (PAY) PLEASE WRITE FSPG: DEPT. PREMIER.
- YOU ONLY USE REFERENCE NUMBER WHEN YOU PHYSICALLY GO TO BANK AND FILL IN DEPOSIT SLIP. AFTER DEPOSITING, YOU FAX ME BACK YOUR DEPOSIT SLIP AND SUBSCRIPTION FORM PLEASE.
- WHEN DEPOSIT MONEY ELECTRONICALLY YOU WILL USE COMPANY NAME AS A REFERENCE NUMBER AND FAX ME BACK YOUR PROOF OF PAYMENT AND SUBSCRIPTION FORM PLEASE.

<u>ENQUIRIES CONTACT:</u>	<u>TEL NO.</u>
MS C TSHABALALA	(051) 403 3139
MRS M.E. MATILE	(051) 403 3590

NOTICE

PLEASE TAKE NOTE: THAT THE LAST PUBLICATION OF THE PROVINCIAL GAZETTE FOR THE YEAR 2010 WILL BE ON 10 DECEMBER 2010.

THE NEXT PUBLICATION WILL BE ON 14 JANUARY 2011.
