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## SPECIAL

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<b>PROVINCIAL NOTICE</b>			
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## [PROVINCIAL NOTICE NO. 228 OF 2015]

**NOTICE IN TERMS OF SECTION 14(2) (a) (i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000: STANDARD BUSINESS REGULATIONS BY-LAW**

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

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**1. Definitions**

In this by-law, unless the context indicates otherwise-

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

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

**“Council”** means-

- (a) the Local Municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998), exercising its legislative and executive authority through its Municipal Council;
- (b) its successor in title, or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-laws, has been delegated or sub-delegated or an instruction is given as contemplated in, section 59 of the Local Government: Municipal System Act, 2000 (Act No. 32 of 2000)
- (d) a service provider fulfilling a responsibility under these by-laws, assigned to it in terms of section 81(2) of the Local Government: Municipal System Act, 2000 or any other law, as the case may be.

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

**“council service works”** means all property or works of whatever nature necessary for or incidental to any council services;

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

**“environmental health officer”** means an official appointment by the Council, and who is duly registered as environmental health officer or environmental health practitioner with the Health Professions Council of South Africa in terms of section 33(1) of the Medical Dental and Supplementary Health Services Professional Act, 1974 (Act No. 56 of 1974);

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

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

**“hot water”** means water which has a minimum temperature of 55°C at the point of discharge;

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

**“municipal area”** means the area under the jurisdiction of the Council;

“**municipal manager**” means a person appointed as such by the Council in terms of section 82 of Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998);

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

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

“**occupier**” in relation to any dwelling, means any person –

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

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

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

“**public road**” means a public roads as defined in section 1 of the National Road Traffic Act, 1996;

“**roadway**” means a roadway as defined in section 1 of the National Road Traffic Act, 1996;

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

“**trade**” includes-

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

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

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

### 3. Principles

- (1) Every person has a constitutional right to an environment that is not harmful to his or her health or well-being and the Council has a constitutional duty to strive, within its financial and administrative capacity, to promote a safe healthy environment.
- (2) The risk of a public health hazard occurring, continuing or recurring must be eliminated whether reasonably possible to do so, it must be reduced to a level acceptable to the Council.
- (3) Any person who owns or occupies a dwelling in the municipal area must ensure that it is used for and maintained in a manner that ensures that no public health hazard or public health nuisance occurs on the premises.
- (4) Any person who wishes to undertake an activity which creates a risk public health that is more than trivial or insignificant must –
  - (a) take all reasonable measures to eliminate that risk, and if that is not reasonably possible, to reduce the risk to a level acceptable to the Council; and
  - (b) bear the cost of taking those measures and of any reasonable costs incurred by the Council in ensuring that the risk is eliminated or reduced to an acceptable level.
- (5) The council must regulate all activities and administer all matters for which it is legally responsible in a manner that –
  - (a) avoids creating a public health hazard or public health nuisance;
  - (b) does not make it easier for any human or animal disease to spread;
  - (c) does not give to unsanitary or unhygienic conditions;
  - (d) prevents unsafe food or drink from being eaten or drunk;
  - (e) avoids creating conditions favourable for infestation by pests; or
  - (f) wherever reasonably possible, improves public health in the municipal area.
- (6) In dealing with matters affecting public health the Council must –
  - (a) adopt a cautious and risk-averse approach;
  - (b) prioritise the collective interests of the people of the municipal area, and of South Africa, over the interests of any specific interest group or sector of society;
  - (c) take account of historic inequalities in the management and regulation of activities that may have an adverse impact on public health and redress these inequalities in an equitable and non-discriminatory manner;
  - (d) adopt a long term perspective that takes account of the interests of future generations; and
  - (e) take account of, and wherever possible without compromising public health, minimise any adverse effects on other living organisms and ecosystems.

### 4. Application of principles

The public health principle set out in section 3 must be considered and applied by any person –

- (a) exercising a power or function or performing a duty under these By-laws;

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

**5. Prohibition on causing public health hazards**

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

**6. Duty to report public health hazards**

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

- (a) eliminate the public health hazard; or **Trading**

**7. Single act constitutes trading**

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

**8. Reference to legislation includes regulations made thereunder.**

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

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

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

**10. Prohibited Conduct-**

- (1) No person shall trade-
  - (a) at a place or in an area not zoned for business or were there is no consent use in terms of applicable legislation.
  - (b) in a garden or a park to which the public has a right of access;
  - (c) on a verge contiguous to –
    - (i) a building belonging to, or occupied solely by, the State or the Council;
    - (ii) a church or other place of worship;
    - (iii) a building declared to be a Public monument;
    - (iv) an autoteller bank machine;
  - (d) at a place where it causes an obstruction in front of –
    - (i) a fire hydrant;
    - (ii) an entrance to or exit from a building;
  - (e) at a place where it could obstruct vehicular traffic;
  - (f) at a place where it could substantially obstruct a pedestrian in his or her use of the sidewalk;
  - (g) on that half of a public road contiguous to a building used for residential purpose, if the owner or person in control, or any occupier of that building objects thereto and such objection is made known to the trader by an authorised official;
- (2) No person may trade in such a manner as to –
  - (a) create a nuisance;
  - (b) damage or deface the surface of any public road or public place or any public or private property.
- (3) No person may-
  - (a) trade unless he or she is a South African Citizen or has the necessary permit from Department of Home Affairs permitting him or her to carry on business in South Africa;

- (b) make an open fire on a public road or public place;
- (c) interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window, or obscure such goods from view.
- (d) obstruct to, or the use of, street furniture and any other facility designed for the use of the general public;
- (e) obscure any road traffic sign displayed in terms of National Road Traffic Act, 1996, or any marking, notice or sign displayed or made in terms of these By-laws;
- (f) trade, or take up a position, or place his or her property on a portion of a sidewalk or public place;
- (g) other than in a refuse receptacle approved or supplied by the Council, accumulated, dump, store, or deposit, or cause or permit to be accumulated, dumped, stored or deposited, any litter on any land or premises or any public road or public place or on any public property.

#### 11. Cleanliness

A trader must –

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

#### 12. Offences and penalties

- (1) Any person who –
  - (a) contravenes or fails to comply with any provision of this By-Law;
  - (b) fails to comply with any notice issued in terms of this By-law;
  - (c) fails to comply with any lawful instruction given in terms of this By-Law; or
  - (d) who obstructs or hinder any authorised representative in the execution of his or her duties under this By-Law,
 is guilty of an offence and liable on conviction to a fine not exceeding R500 or, in default of payment, to imprisonment for a period not exceeding 3 (three) months and in the case of a continuing offence, to a further fine not exceeding R1000 or, in default of payment, to imprisonment not exceeding one day, for every day during the continuation of such offence, after written notice has been issued by the Council and served on the person concerned, requesting the discontinuation of such offence.

#### 13. Regulations

- (1) The Council may make regulations regarding –
  - (a) (i) the prescription of penalties for the offences contemplated in terms of section 12; and
  - (ii) the amendment of such penalties from time to time;
  - (b) any other matter mentioned in the By-laws.

#### 14. Short Title

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

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