



## **MOSES KOTANE LOCAL MUNICIPALITY**

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## **BUSINESS REGULATION AND PERMIT BYLAW**

## DEFINITIONS AND INTERPRETATIONS

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

**“Act and Regulations”** refers to National Building Regulations and Building Standards Act No. 103 of 1977 and National Building Regulations & Building Standards Amendment Act No. 49 of 1995

**“Asylum”** means a person who is seeking recognition as a refugee in the Republic.

**"Authorised Officer"** means any official of the Municipality who has been authorized by the Municipality to administer, implement and enforce the provisions of this By-law.

**“Council”** means the Council of Moses Kotane Local Municipality, a municipality established in terms of section 12 of the Local Government Municipal Structures Act, no.117 of 1998 and any member of administration to whom the Council has delegated the powers, functions and duties vesting in the Council in relation to this By-Law.

**“Dwelling”** means a building, designed for use as a house for, and used exclusively by, a single household family.

**“Head”** means the head of the Local Economic Development.

**“Municipality”** means means the Council of Moses Kotane Local Municipality established by the Provincial Gazette, Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“Municipal Consent”** means the consent, in writing, by the Municipality for any activity on, or use of land or buildings for which an application is made, in terms of any relevant legislation.

**“Public Nuisance”** means any activity which spills over beyond the property and causes problems for immediate and surrounding neighbors; this includes noise levels or activities which may cause health or pollution problems such as smoke or flies / vermin, vehicle oil or unsightly activities / storage of goods which detract from the amenity of the neighborhood.

**"Operator "**, in relation to any spaza, means any person who is the owner of the shop and/or is leasing space in the owner’s site for him/her to run a spaza shop.

**“Outbuilding”** means a building attached to or separate from a dwelling and ancillary to a dwelling.

- “Owner”** means the person in whose name the site/erf is registered in the deeds registry for Free State Province or he/she is the beneficial holder of a real right in the site/erf or he/she is the person in whom the site/erf vests
- "Person"** means a natural person or a juristic person, and includes an organ of state.
- "Premises"** in relation to any spaza, means a site/erf wherein the spaza shop business is operated.
- “Property”** means that to which a person has a legal title, whether in his possession or not; thing owned; an estate, whether in lands, goods, or money.
- “Refugee”** means any person who has been granted asylum in terms of the Act (Act No. 130 of 1998).
- “Residential Areas”** a residential area is a type of land use where the predominant use is housing. In areas that are zoned residential, buildings may include single family housing, multiple family housing such as (apartments, duplexes, and town homes).
- “Spaza Shop”** means a business building, whether attached or separated from a residential dwelling or any building in a site, operated for the purposes of selling basic groceries (daily convenience goods) and fresh produce, in response to local needs in a small neighbourhood within walking distance of people’s homes, and the goods sold exclude liquor or alcoholic beverages and hazardous substances.  
The shops are typically operated from outbuildings or temporary structures/ shipping containers and are generally separated from the main house.
- “Tuck Shop”** means “spaza shop” for the purposes of this By-law.
- “Zoning”** means the development rights and controls accorded to the property and its associated buildings either as of free entry rights, rights that area accorded in term of Municipal approval.

## **2. PURPOSE OF BY-LAW**

- 2.1 The purpose is to regulate and control the operations of Business within the area of jurisdiction of the Municipality, in particular, to ensure compliance with safety and health requirements.

## **3. SCOPE AND APPLICATION OF BY-LAW**

- 3.1 The By-law applies to all businesses that are located either in the residential dwelling or (part thereof), or on a property located in town, as long as the property has been zoned:
- 3.2 The By-law applies to any Business operator or the site owner wherein the Business is operated within the area of jurisdiction of the Municipality

## **4. LEGISLATIVE FRAMEWORK**

**The major relevant legislation upon which the by-law is based are:**

- 4.1 Constitution of the Republic of South Africa Act No. 108 of 1996
- 4.2 Spatial Planning and Land Use Management Act No.16 of 2013
- 4.3 The Promotion of Administrative Justice Act No.3 of 2000
- 4.4 National Building Regulations and Building Standards Act No. 103 of 1977 and National Building Regulations & Building Standards Amendment Act No. 49 of 1995
- 4.5 National Environmental Management Act No.107 of 1998
- 4.6 Businesses Act No. 71 of 1991
- Other national or provincial legislation, not mentioned herein above, are also applicable as well other by-laws of the Municipality.

## **5. APPLICATION PROCEDURES**

### **5.1 Application Forms**

- (a) A person who wants to operate a business within the jurisdictional

area of the Municipality must apply to the Municipality on prescribed forms available at Municipal offices.

- (b) The Municipality will consider the application within the period of ten (10) working days upon the date of the receipt of the application forms.
- (c) For the application to be considered, the applicant must complete the forms fully, and attach to the forms the relevant documents mentioned in subsection (5.3) below.

## **5.2 Operating Card Permits**

5.2.1 The operating card permit shall be issued by the Municipality and it is renewable annually.

5.2.2 The following terms and conditions shall apply to the operating card permits:

- (a) operating card permit can only be issued by the Municipality upon the payment of the prescribed fee determined by Council from time to time;
- (b) operating card permit is not transferrable without the permission of the Municipality;
- (c) a business operator must at all times be in a position to produce the operating card permit on demand by the authorised officer whenever so required;
- (d) if the operating card permit gets lost or accidentally or unwillingly damaged or destroyed the owner must immediately report the loss, damage or destruction thereof to the Municipality;

## **5.3 Requirements for Applicants**

Completed application forms must be accompanied by the following documents:

- (a) Certified copy of *South African Identity Document*, if he/she is a South African citizen;
- (b) *Proof of Residence*, if he/she is a Moses Kotane Local Municipality resident;
- (c) *Original Copy of Asylum Document* issued by the South African Department of Home Affairs, if he/she is a foreign national;

- (d) Concluded Lease *Agreement* in cases where the site owner is not the business operator;
- (e) Certified copy of *title deed* or *permission to occupy*;
- (f) Neighbouring community's consent form;
- (g) Building plan of the Business shop; and
- (h) Internal and external photos of the existing building(s) in the site.

#### **5.4 Approval of Application**

- (a) Once the application has been approved by the relevant Head of Department or his designee, an applicant will be notified of the approval within the period of ten (10) working days.
- (b) The applicant will be required to pay the prescribed operating fee and he/she will then be issued with the operating card permit.
- (c) Business operator is not permitted to trade until he/she receives his identity operating card permit.
- (d) Approval conditions, if any, will be attached to the operating card permit.

#### **5.5 Disapproval of Application**

- (a) If the Municipality, by the Head of Department or his designee, has decided to disapprove the application, the applicant will be notified of the decision to disapprove his application within the period of ten (10) working days.
- (b) The applicant will be provided with written reasons for the disapproval, and the decision can be in terms of the provisions of this By-law or in terms of any legislation applicable or circumstances warranting the Municipality to arrive at such decision.

#### **5.6 Appeal against Disapproval**

- (a) The applicant whose application has been disapproved has the right to appeal against the decision.

- (b) The affected applicant must lodge his appeal with the Municipal Manager within the period of fourteen (14) days upon the receipt of the notice of the disapproval.
- (c) The Municipal Manager must consider and decide on the appeal within the period of ten (10) working days.
- (d) The decision by the Municipal Manager is final and binding.

### **5.7 Withdrawal and Lapsing of an Approval**

Approval is granted to the owner of the property to run a business from his dwelling unit and will be withdrawn under the following circumstances:

- (a) When the property is alienated.
- (b) In the event of the death of the owner.
- (c) Valid objections have been received and an interdict against the owner is obtained.
- (d) The owner of the property is arrested in connection with drug abuse, selling of drugs, the sale of the illegal operation non other than the one applied for, prostitution, gun incidents, knife stab incidents or any other crime incidents.
- (e) Where the owner terminates the lease agreement with the operator.
- (f) Where the business is a cause of nuisance to surrounding neighborhood.
- (g) Where operating permit conditions are not complied with.
- (h) Where any provision of this By-law is violated.

### **5.8 Non-compliance with Approval Conditions**

- (a) If approval conditions are not complied with, the Planning Department will issue a written notice to the operator to rectify any irregularities within 7 (seven) days.
- (b) If complaints are received with regard to the approved business, the Planning Department will evaluate the validity of the complaints and where applicable, notify the operator about the complaints and further give a written notice to the operator to comply with the conditions put by the Municipality.

- (c) Failing to comply with points (a) and (b) above may lead to the Municipality cancelling the operating card permit and further seeking court interdict against the operator compelling the owner to stop the tuck shop business from operating from the property.

## **6. GENERAL TERMS AND CONDITIONS**

6.1 Any approved business must abide by the following terms and conditions, to the extent that they are applicable:

6.1.1 If the erf is a residential site it must remain a residential in appearance and character. The overall use of the erf must remain 60% of the residential use.

6.1.2 The owner who resides on the site, may operate the business. Only in exceptional circumstances may the business activity be conducted by anyone other than the owner.

6.1.3 The building plans of the business must have been approved and the side of the building thereof must be up to 20m.<sup>2</sup>  
No business may operate if building plan for the structure has not been approved by the Municipality.  
Business structure must comply with the Act and Regulations, and the Building Regulations By-laws of the Municipality with regard to human occupancy.

Such buildings must therefore at least have a foundation, be adequately ventilated, allow for sufficient natural light to enter the structure, have access to a toilet and a hand basin for sanitation purposes (connected to the municipal network), have electrical and plumber certificates and must provide for adequate storm-water run-off.

A shipping container or a timber structure cannot be used as a business if it does not comply with the regulations and thus cannot be occupied. It is however possible that the container or the timber structure can be converted to comply with the regulations and used for the purposes of a business.

Corrugated iron sheets may be used in erecting the business building, provided that the construction thereof adheres to the Regulations and the Act.

6.1.4 A business shall only be operated with operating card permit issued by the Municipality and the operating card permit is not transferable.



- 6.1.5 The sale of liquor or alcoholic beverages and hazardous substances is prohibited if not applied for in terms of the relevant act.

However, flammable substances such as paraffin may only be sold in small containers and be subject to the Firefighting By-laws of the Municipality.

- 6.1.6 A business should not cause or be a cause of any kind of disturbance or public nuisance which will disturb people within the neighborhood.
- 6.1.7 The operating hours for all the businesses is allowed between 06h00, in the morning, and 22h00, in the night, every day except otherwise permitted by the Municipality.
- 6.1.8 The storage of goods and equipment shall be within the area designated for that purpose on the plan which is to accompany the application detailing that area to be used for the business as well as any portion of that area in which goods or equipment will be stored.
- 6.1.9 If the business is closed for the period longer than 90 days, it will be presumed that the business is no longer operating and the operator thereof or the owner of the site should inform the Municipality in writing. The Municipality will proceed to cancel the operating card permit in regard to that business.
- 6.1.10 Where an operator has more than more one business in separate sites, a separate permit is required for each tuck shop operating.
- 6.1.11 No person is allowed to sleep and/or wash himself/herself in the business space.
- 6.1.12 No person is allowed to operate a business if he/she has been declared by a court of law to be of unsound mind.
- 6.1.13 The operator must not commit any criminal activity in the business in question or he/she must not have criminal record that led to his/her business being closed.
- 6.1.14 No pets or birds should be kept in the tuck shop.
- 6.1.15 Trading is restricted to the boundaries of the property. No trading is permitted on either the sidewalks or road reserve; unless a written permission is sought in case of special occasions and events.

6.1.16 No signs advertising the business shall be larger than 600mm by 450 mm in size. Such sign should indicate the name of the owner, the name of the business and the nature of the trade.

Any other sign must be applied for and approved by the Municipality before it can be erected.

Advertising signs must comply with the Outdoor Advertising By-law of the Municipality.

6.1.17 The following health regulations must be complied with if food is to be sold or prepared from the premises, namely:

- that the owner obtains a business license for the preparation of meals as required in term of the Business Act, 1991 (Act 71 of 1991) from the Municipality;
- that the premises comply with the general hygiene requirements for food premises and the transport of food regulations R962 of November 2012 promulgated under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972);
- that a Certificate of Acceptability be obtained as required by regulations R962 of November 2012 promulgated under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972) from the Municipality; and
- that the premises comply with government notice R264 of 30 March 2012 relating to the smoking of tobacco products in public places as promulgated in terms of the Tobacco Products Control Act, 1993 (Act 83 of 1993) as amended.

6.1.18 Operators must register for tax with the South African Revenue Services.

6.1.19 Business may not be permitted on a property if the use is in conflict with a restriction contained in the title deed of that property.

6.1.20 Should the homeowner be selling goods on a very small scale, i.e. there is no dedicated room or separated space for the business, and is limited to, e.g. three shelves in a living area, the activity will not be regarded as a business and will be regarded as a home activity, and therefore will not require a municipal approval.

6.1.21 A business must only be for the sale of grocery items that appear to be required for the day to day consumption or usage such sweets, cigarettes, bread, milk, maize-meal, salt, sugar, tea, air-time, chips and other small goods, home-made foods and preserves.

6.1.22 Business building plan must show the layout, extent, position and elevations of buildings on the proposed plan.

6.2 Council may however impose any additional conditions it seems fit depending on the circumstances.

## **7. TRANSITIONAL ARRANGEMENTS**

7.1 The Municipality should, by public notice, call all the existing business within the area of jurisdiction of the Municipality to register their businesses.

7.2 All the existing business must have been registered with the Municipality within the period of three (03) months upon the promulgation of this By-law in the provincial gazette.

7.3 Any existing business that will not have registered with the Municipality in terms of the public notice to be issued by the Municipality, prescribing deadline for registrations of existing businesses, will be regarded operating illegally after such a prescribed date.

7.4 The applications of the existing business must also comply with the application procedure of this By-law.

7.4 Any new business established after the coming into operation of this By-law must apply, in terms the application procedure of this By-law, before they can operate

## **8. OFFENCES AND PENALTIES**

8.1 Any person who operate a tuck shop business without a Municipal approval shall be liable to a fine of R3 500, 00.

8.2 Business owner/operator who fails to renew their operating permit on time will be fined R2 000 and the shop will be closed until the prescribed fee is paid.

8.3 Any person who sleeps or washes himself/herself in the shop or the shop does not comply with hygiene requirements will be fined R5 000, 00.

8.4 In the case of continuous offence, an additional fine of two hundred and fifty rand (R250.00) will be imposed for each day on which the offence continues.

8.5 Any other offence, in violation of the By-law, will be determined by the Magistrate.

## **9. REPEAL**

9.1 Any by -laws relating to Business owner adopted by the former municipalities now forming part of the Municipality are repealed from the date of promulgation of this By-law.

## **10. SHORT TITLE AND COMMENCEMENT**

10.1 This By-law is called Moses Kotane Local Municipality, **Business Regulation and Permit By-law** and comes into operation on the date after final approval by council.

## **11. CONCLUSION: A PHASED APPROACH**

Currently, Business is managed by a variety of different departments within the different administrations, including the Department Public Safety, Business Areas Management, legal services and the Department Economic Development.

In addition to this, each administration has been using its own way of managing business which creates the challenge of establishing one system that will ensure uniformity and consistency throughout the Village/Township. While this process is underway, the need for immediate, effective and efficient management of informal trading remains.

In order to ensure a quick and significant progress, it is imperative that the management of business ensures cross-functional cooperation and involvement of all Departments, focused on the end result. These bylaws will be monitored and reviewed every five years.

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**Ms. G. R. Madikela**  
**HOD: Local Economic Development**