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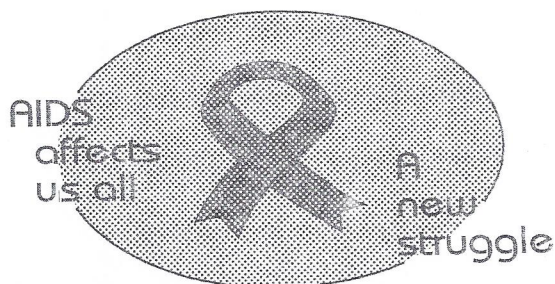
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PART 4 OF 4

We all have the power to prevent AIDS



Prevention is the cure

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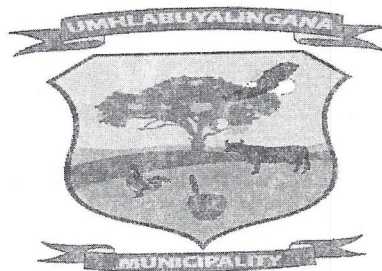
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MUNICIPAL NOTICE 69 OF 2017



Umhlabuyalingana Business Licensing By-laws

"UMhlabuyalingana Municipality aims to empower obedience on entrepreneurial prospects within the formal trading division through revering confirmatory solidarity that will enable UMhlabuyalingana formal traders to operate efficiently within an adopted sustainable economic growth approach"

WHEREAS the council acknowledges formal trading as the main positive development factor from the micro to macro business sector of the area because of its contribution towards creation of jobs and alleviation of poverty, a compliant and competent trading environment should be certainly ensured.

HOWEVER, for an efficient facilitation of the formal trading compliance within UMhlabuyalingana, considerations should be given to the following:

- Regulation of activities that relate to formal trading;
- innovation of a secure and competitive environment for the council projection; and
- establishment of a correct platform for promotion of economic development

Indispensably, UMhlabuyalingana municipality has an ability, in terms of the section 156 (2) of the Constitution of the Republic of South Africa, to make and administer by-laws for applicable supervision of the matters that it has an ability to govern. As such, the UMhlabuyalingana municipality, achieving section 2 of the Business Act 71 of 1991, hereby formulates the following By-law:

BACKGROUND

In line with the Business Act 71 of 1991- section 6A (Powers of the local authority), the UMhlabuyalingana municipality mandates every kind of formal business to occupy a business licence. The business license is specifically required for businesses that need to comply with health and safety regulations. The businesses will need to meet the set criteria of requirements, especially, zoning; health; and safety. As such this by law deals with any other matters governing both formal and liquor trading within the concerned areas, including but not limited to-

- (a) main implicated formal trading areas and ideal trading times;
- (a) the manner in which socio-economic development of the liquor traders within UMhlabuyalingana area will be facilitated;
- (b) how neighbouring business; social; and environmental structures around the trading area will be protected; and
- (c) How the implicated businesses will be expected to operate within the municipal compliance plans.

These by-laws completely comply with the Business Act 71 of 1991. Before its adoption, the council has confidently consulted with the interested and affected individuals, including the sectors' stakeholders regarding the contents of the draft by law. The notice was printed and placed to all three trading zones of UMhlabuyalingana (Manguzi; Skhemelele; and Mbazwana), informing the public that the draft business licence by-law is available for inspection at a specified location and between specified hours; inviting interested and affected persons to attend a public meeting; and inviting comments and objections from the public. The notice referred to contained a summary of the key aspects of the by law.

During the public meeting, an authorized municipal official presented and explained the draft business licence by law; reasonably responded to any enquiries related to the draft by law; furnished interested and effected parties an opportunity to make comments and to lodge objections. The draft by law was amended considering all objections or comments received from the public. The draft UMhlabuyalingana business licence by law will then be adopted as final on the 30th of September 2014.

As such, subject to compliance with the provisions of this By-law, any person is permitted to engage in formal and liquor trading within the area of UMhlabuyalingana Municipality. The council will amend or revoke an adopted business licencing by law through engaging all relevant stakeholders of the sector; and offer to any person whose existing rights are undesirably affected by a proposed amendment their rights to administrative justice. The municipality will engage on the review of the adopted business licence by law from time to time to ensure its viability.

TERMS AND CONDITIONS FOR BUSINESS LICENCE APPLICATION

Both new applications and renewals should be in a prescribed municipal form

New Applications

A person may for the first time, apply for business licence to conduct business if the person –

- (a) is a formal trader or wants to become a formal trader;
- (b) trades or want to trade with the following:
 - Perishable foodstuff in the form of meals;
 - takeaways/ restaurants;
 - butchery/ fishmonger;
 - supermarkets;
 - General dealer;
 - convenience stores;
 - accommodation establishments;
 - canteens/ caterers;
 - coffee shops; and
 - all liquor outlets.
- (c) These by-laws implicate traders who provide the following:
 - Turkish baths, saunas, or other health baths;
 - massage or infra-red treatment
 - escorting
 - keeping three or more mechanical, electronic, or electrical contrivances, instruments, apparatus, or devices which are designed or used for the purpose of playing of any game or for the purpose of recreation or amusement, and the operation of which involves the payment of any valuable consideration, either by the insertion of a coin, token coin or disk therein or in an applicable attached thereto or in any other manner;
 - keeping three or more snookers or billiard tables;
 - keeping or conducting a night club or discotheque;
 - keeping or conducting a cinema or theatre;
 - conducting adult premises referred to in section 24 of the films and publications act, 1996
- (d) The applicant shouldn't already hold a licence in respect of any informal trading site within the jurisdiction area of the UMhlabuyalingana Municipality;
- (e) occupies an approved lease and building plan;

- (c) Be a member of the Local Business Forum if there is any. A membership certificate should be attached on the certificate
- (d) occupies an Environmental Health certificate or approval of the environmental health inspector;
- (e) trade only from fixed premises; and is a
- (f) South African citizen or, failing which, has a valid business visa business which includes but is not limited to a refugee permit, and asylum seeker as stipulated in the immigration and refugees act

The Municipality will consider any application for a business licence application and may-

- (a) approve it subject to the above conditions;
- (b) request that additional information be furnished within a specified time frame; or
- (c) reject the application and provide reasons thereof.

The Municipality will take into account the following factors when considering an application for business licence application:

- (a) the need to give preference to applicants who-
 - are residence of UMhlabuyalingana area;
 - are black persons;
 - are unemployed;
 - do not share a household with an existing permit-holder, unless the applicant;
 - is not a dependant on or financially reliant upon that permit-holder; and are
 - are physically challenged
- (b) an application is through a complete prescribed UMhlabuyalingana business and liquor licence application form and be directed to the Local Economic Development designated official; and that
- (c) Business licences will be categorized according to specific services and whether the trader is permanent/ temporal/ special event.

Existing traders' application requirements

The applicant should:

- Be a citizen of UMhlabuyalingana area to get first preference over any other applicant (Proof of residence must be attached);
- Not be involved in any informal business sector;
- Comply with Planning requirements (Building and land occupation form);
- Comply with Environmental Health; and safety requirements.

Application returnable documents

- Business Registration certificate if not a sole proprietor
- Landlords Consent (Copy of Lease agreement/letter of consent from the landlord/ proof of ownership);
- Approved building or floor plan;
- Green bar coded ID book together with certified copy/ valid Home Affairs permit;
- Valid business which includes but is not limited to a refugee permit, and asylum seeker as stipulated in the immigration and refugees act.
- Health certificate or approval from environmental health inspector for those who trade with perishable foodstuff;
- Approval from safety inspector;
- Municipal rates clearance certificate or approval from the municipal finance department;
- Proof of application fee; and
- Complete prescribed UMhlabuyalingana business licence application form

Business License application process

The following is the procedure that will be followed throughout the application process for a Business License:

- Step 1:** Submission of the application form directly to the LED designated official;
- Step 2:** Assessment of an applicant adherence to the by-law and set application requirements;
- Step 3:** Verification of the application supporting documents;
- Step 4:** Communication of the application assessment outcomes with an applicant;
- Step 5:** Based on the assessment outcomes, applicant to provide proof of payment;
- Step 6:** Capturing of the application form to create a business license; and finally
- Step 7:** Issue the business license referring to the specific business operation.

NB: Applications will be dealt with as soon as they reach the LED unit. Maximum duration could be five (5) working days.

Renewal of Business License

- a) All permits will be effective from the first day of issue and be due for renewal on every last day of the 12th month each year (1-year);
- b) An extension of **two days only after the business licence expiry date** will be offered; and that
- c) The applicable renewal process will be the same as the new application.

Business License new application and renewal fees

DESCRIPTION	TARRIF AMOUNT
BUSINESS LICENCE	
New Application and Renewal (only when trading from fixed premises)	R228.00
SPECIAL ECONOMIC EVENTS/ ONCE-OFF PERMIT	
This is only applicable to the event hoster/ organizer	R1000.00/ day
DUPLICATE	
On submission of an application for a duplicate of an existing license (whether lost or occupied)	R10.00
PENALTIES	
Trading without a business licence/ Failure to produce a business license upon request and/ or Trading without a Business License	R1000,00 to an additional fine of R10,00 on every day from which the offence continues
Dealing with illegal/counterfeit goods	As decided by the court judge

A maximum of three days remains the standard duration for any kind of between the municipality and applicant/ business licence holder concerned. Non co-operation by the

applicant/ permit holder concerned within given duration will result to non-consideration of the subject matter.

4. GENERAL RESTRICTED CONDUCT

- The formal trader must dispose of litter generated by his or her trading activities in a refuse receptacle approved or supplied by the Municipality, unless operating from where receptacles are not made provisions of;
- The formal trader must not, other than in a refuse receptacle approved or supplied by the Municipality, accumulate, dump, store, 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; and
- No trading goods are to be placed on any public road or public place.

4.1 Environmental health

An informal trader must –

- keep the formal trading site or area occupied by him or her for the purposes of conducting formal trading in a clean and sanitary condition;
- keep his or her goods in a clean and sanitary condition;
- ensure that, on completion of each business day –
 - the trading site is free of litter and any other form of waste;
 - take necessary precautions in the course of conducting his or her business as may be necessary to prevent the spilling of fat, oil or grease onto a public road, or public place, or into a storm water drain;
 - ensure that no smoke, fumes or other substance, odours, or noise, emanating from his or her trading activities, causes pollution of any kind;
 - carry on business in a manner which does not cause a threat to public health or public safety; and
 - At the request of an authorised municipal official, remove any object that relates to informal trading.

Obligation of property owners

- The property owner must –
 - ensure that any formal trading taking place on his or her property complies with this by-law;
 - permit any authorised official access to his or her property for the purpose of ensuring compliance with this By-law;
 - Ensure that the trading area is in line with the municipal Town Plan zoning. If not so, an applicant should apply for a special consent at the Town Planning unit; and
 - Ensure that sufficient services are provided to maintain acceptable hygienic conditions in respect of the formal trading.
- Failure to comply with a lawful request of an authorised official is a contravention of this by-law;
- If an informal trader violates any provision of this by-law, an applicable formal trading policy or his or her permit yet failing or refuses to end the violation, or to take steps to rectify any violation, then the Municipality may take those steps itself and recover the costs from the formal trader at its own discretion;
- The costs mentioned in Section B (Penal Provisions), is in addition to any fine which may be imposed on the formal trader by the other relevant municipal stakeholder (e.g Department of Transport / South African Protection Services/ Liquor Board, etc).

Impoundment of Goods

Any good impounded in terms of these by-laws shall be dealt with as follows:

- Upon claiming of goods, the owner shall pay the a council set amount as reflected on the schedule;
- if the goods are not claimed within the period specified on the receipt issued in terms of this by-law, the goods shall be considered as waste and be disposed-off to the nearest municipal landfill site;
- Any perishable goods may be sold or destroyed as soon as it may be necessary;
- The impoundment of goods will be carried out irrespective of whether or not such goods are in the possession or under the control of any third party at the time;
- Any authorised official who removes and impounds goods must issue a trader with a formal municipal prescribed notice which-
 - itemises the goods impounded;
 - provides the address where the impounded goods will be kept at the trader's own risk;
 - states the period of impoundment;
 - states the terms and conditions which must be met to secure the release of the impounded goods;
 - states the impoundment fee to be paid to secure release of the impounded goods;
- If any goods impounded are attached to immovable property or a structure, an authorised official may order any person who appears to be in control of the immovable property or structure to remove the goods to be impounded and, if that person refuses or fails to comply, then-
 - that person shall be guilty of an offence; and
 - The authorised official may remove the goods himself or herself.
- Goods which have been impounded will be released upon:
 - Receipt for proof of ownership in the form of the presentation of the receipt; and
 - Payment receipt described on the note
- The Municipality will after two working days of the impoundment sell or otherwise dispose of-
 - impounded perishable goods if the goods represent or might represent a health risk or a nuisance; and
 - Foodstuffs which are unfit for human consumption.
- No special price will be offered to the impounded goods owner after the council has declared the goods for sale;
- If in the reasonable opinion of an authorised official, the formal trader is suspected of trading with illegal goods, then those goods may be immediately seized and, in the event of such a seizure, the authorised official must-
 - comply with the requirements of this by-law; and
 - Immediately surrender the suspected illegal goods to the possession of the South African Police Service.

Offences

- The formal trader is guilty of an offence if he or she:
 - trades without the municipal business license;

- contravenes any provision of this By-law;
- contravenes any condition on which a business license has been issued to him or her;
- contravenes any provision of an applicable formal trading by-law;
- fails to comply with any lawful instruction given in terms of this By-law;
- threatens, resists, interferes with or obstructs any authorised official in the performance of official duties or functions in terms of this By-law; or
- Deliberately furnishes false or misleading information to an authorised official.

Penalties

From the prescribed penalties below, a 10% interest rate will be applicable and incurred from the responsible trader each day after exceeding the two days' notice of penalty payment. The penalty fees will apply as follows:

- Failure to produce a business licence upon request;
- When caught dealing with illegal/counterfeit goods; and
- Any form of non-compliance resulting to impoundment of goods will also result to a fine. Stock size (minor; reasonable; and or major stock) will be at the municipal discretion.

NB: Except from the above penalty fees, Imprisonment duration will be applicable as determined by the court judge.

Exemption from liability

The Municipality shall not be liable for any goods damages/ loss or compensation resulting from anything that has been lawfully done in good faith by it or any authorized official or employee thereof in terms of this by-law.

Appeals

- A person whose rights are affected by a decision taken by the Municipality in terms of this by-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons to the office of the municipal manager within 21 days of the date of the notification of the decision;
- The office of the municipal manager should promptly submit the appeal to the appropriate appeal authority;
- The appeal authority should commence with an appeal within four weeks and decide on the appeal application within a reasonable period;
- The appeal authority should confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision;
- The appeal authority should furnish written reasons for its decision on all appeal matters;
- All appeals lodged should be done in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this by-law;
- Where a conviction has been confirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsection 4.8
- All business licences issued under the UMhlabuyalingana Municipality Business Licensing By-Law remain in full force and will be effected in terms of the UMhlabuyalingana Business Licensing By-Law and other legislations as quoted in these by-laws

Transitional provisions

Notwithstanding the enactment of this by-law:

- Any area within the jurisdiction of the UMhlabuyalingana Municipality where the carrying on of the formal business takes place, shall remain valid until such time that the council adopts Business Licensing By-Law in respect of such area in terms of this By-law; and
- Where the formal trader had been authorized prior to the enactment of this By-law which permits trading from a particular site, such business license shall remain valid until a new business license system is adopted by the council which complies with this By-law.

Short title and commencement

These By-laws are called the UMhlabuyalingana Municipality: Business Licensing by-laws, and takes effect after the first date of official gazette.