

DEPARTMENT OF CO-OPERATIVE GOVERNANCE

NOTICE 2534 OF 2024

STANDARD DRAFT BY-LAWS FOR TOWNSHIP ECONOMIES ISSUED IN TERMS OF
THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2002 (ACT NO. 32 OF 200)

I, Ms Thembi Nkadimeng, Minister of Cooperative Governance and Traditional Affairs, hereby, in terms of section 14(1)(b) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), publish the proposed Standard Draft By-Laws for Township Economies, in the Schedule hereto, for public comments.

Any person who wishes to submit written comments on the proposed Standard Draft By-Laws for Township Economies are hereby invited to do so within 30 days from the date of publication hereof by—

- (a) posting such comments to the following address:

Department of Cooperative Governance
Private Bag X804
PRETORIA
0001;

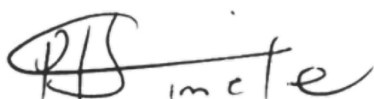
- (b) delivering such comments by hand at the following address:

Department of Cooperative Governance
87 Hamilton Street
Arcadia
PRETORIA; or

- (c) e-mailing such comments to the following address:

viwes@cogta.gov.za

Comments must be addressed to the Director-General: Cooperative Governance and marked for the attention of **Ms Viwe Sibelegwana**.



MS THEMBI NKADIMENG, MP

MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

DATE: 23/05/2024

SCHEDULE

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Preamble

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

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

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

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

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

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

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

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

Definitions

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

"authorised official" means an employee of the municipality who is duly responsible for carrying out any duty or function or exercising any power in terms of this Standard Draft By-Law and includes: a. a law enforcement officer declared to be a peace officer in terms of section 334(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and b. any other employee delegated or person authorised to carry out or exercise the duty, function or power.

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

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

"goods" means anything marketed for human consumption;

"illegal goods" means goods which may not lawfully be acquired or disposed of;

"litter" includes a receptacle, container, or other matter, which has been discarded, abandoned, or left

behind, by a street trader, or by his or her customers;

"Minister" means the Minister for Cooperative Governance and Traditional Affairs;

"municipal council" means the municipal council referred to in section 157 of the Constitution; **"municipal**

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

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

Act" means the National Road Traffic Act, 1996 (Act No. 93 of 1996); **"obstruct"** means to do anything which blocks or is likely to block vehicular or pedestrian traffic flow on a public road;

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

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

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

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

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

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

"services" means work done or value created for human consumption;

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

"standard draft by-law" means a framework by-law developed in terms of section 14(1)(a) and (b) of the Act in line with the municipal functions and powers, wherein the Minister, at the request of organised local government representing local government nationally, or after consulting with the MECs for local government and organised local government, has by notice in the *Gazette* made a standard draft by-law and consulted other relevant Cabinet members if the standard draft by-law affects any Cabinet member's area of responsibility;

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

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

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

"townships" means residential townships which were established during the colonial and Apartheid eras for temporary occupation by Black South Africans on the outskirts of towns and cities, and where only the

most basic amenities and infrastructure were provided;

“township economies” means business activities (formal or informal) undertaken in townships;

Objectives

2. The objects of these by-law are to—

- (a) facilitate inclusive spatial and economic development in townships;
- (b) harmonise the township ecosystem and provide norms and standards for the establishment and management of township-based enterprises both formal and informal;
- (c) raise awareness of applicable laws and regulations affecting township businesses; and
- (d) support small businesses to grow and participate in mainstream economic activities.

Freedom to engage in business activities

3.(1) Subject to subsection (2) a South African citizen, permanent resident or foreign nationals that has a business licence, may engage in business activities within the area of jurisdiction of a municipality.

(2) A municipality may, based on its developmental objectives, determine quotas on the proportion of businesses within specific categories of business, to be owned and operated by foreign nationals.

(3) In determining the quotas municipalities must ensure amongst others that at least 60% of the total staff complement employed in the business operations are South African citizens or permanent residents in line with Regulation 14(2) (b) of the Immigration Regulations of 2014.

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

- (a) legislation in the Republic of South Africa;
- (b) any applicable permits or licencing requirements;
- (c) other applicable municipal by-laws and policies; and
- (d) this standard draft by-law.

Designated business areas and sites

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

- (a) promote commercial and industrial activity in townships; and
- (b) demarcate business areas and sites to promote inclusive economic development.

(2) A municipality may, by resolution—

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

- (b) lease land or a portion of a property to the owner or occupier on condition that the owner or occupier allows a specified number of businesses to trade on such property on terms and conditions determined by the municipality over an agreed period of time; and
- (c) where possible, provide infrastructure for businesses that are leasing.

Proactive steps to be undertaken by the municipality

5. A municipality must exercise its functions and powers to—
- (a) build the operational and management capacity of entrepreneurs and small businesses in townships through workshops, training or mentoring;
 - (b) conduct business compliance and awareness workshops;
 - (c) facilitate skills development and business development support services for township businesses;
 - (d) facilitate access to infrastructure for township businesses; and
 - (e) facilitate access to markets for township businesses.

Registration and permitting of business activities

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

- (2) The delegated official or officials is or are responsible for—
 - (a) creating awareness about the application process and applicable policies and by-laws;
 - (b) assisting and supporting applicants in the application process;
 - (c) administering the processing of applications;
 - (d) reviewing and approving applications for registration or permitting including—
 - (i) receiving applications for registration;
 - (ii) investigating the feasibility of the application and the compilation of a report thereon;
 - (iii) submitting the application and the feasibility report to the delegated authority; and
 - (iv) issuing of registration cards or permits;
 - (e) resolving complaints and disputes occurring between the municipality and the business; and
 - (f) facilitating efficiency and municipal responsiveness in registering and permitting businesses, as well as enforcing the by-law.
- (3) Application forms for registration or permitting can be accessed physically at the municipal offices and on the municipal website.
- (4) The municipal manager or any other delegated official or officials, is or are responsible to establish and maintain a database of registered businesses, which must contain the following information and must be managed in accordance with PAIA guidelines:

- (a) The full name, surname, gender and disability status of the business owner;
 - (b) the identity number of the business owner concerned;
 - (c) the physical and postal address of the business concerned;
 - (d) the location where the business concerned is authorised by such registration to carry on business, and if such registration applies to a trading plan area, the trading bay or market allocated to such a business in accordance with the applicable trading plan;
 - (e) a description of the goods or services that the business concerned may be authorised by such registration to sell or provide;
 - (f) a distinguishing registration number;
 - (g) citizen, passport number, section 22 asylum seeker permit, section 24 refugee permit, valid visa allowing foreign national to sojourn in the Republic to work or conduct business; and
 - (h) any other information that may be required by this by-law.
- (5) A business conducting a business activity in an area within municipal jurisdiction must be registered with the municipality or any other relevant authority and in compliance with the provision of the land use scheme of a municipality.
- (6) A registered business must be issued with a registration card or permit that must be displayed and be available for inspection at all times.
- (7) A municipality may charge a permit holder a trading fee, an application fee and any additional fee or tariff to be determined by the municipality, for additional costs incurred or services provided by the municipality.
- (8) If a person conducts business activities without approval by the municipality—
- (a) the delegated official of the municipality must give a written notice and a verbal instruction in one of the official languages that such person understands, requiring the unregistered business to make an application for registration within 30 days after receipt of the notice.
 - (b) the notice and instructions must provide such person with additional information that will enable that person to understand the procedure to register, the duties and obligations or responsibilities of registration and the consequences of not registering.
 - (c) failure to comply within 30 working days will result in the automatic closure of the business.
- (9) The responsible official must put in place a complaints system that can be used by residents and community members to report and receive feedback regarding their complaints or concerns and an appeal process.

Transferability of permit

7.(1) In the event of the death of a permit-holder and if the loss of income generated by the informal trading would place the dependents of the deceased permit-holder under undue or severe economic hardship, a permit may be permanently transferred, with the written approval of the municipality, to a dependant, or an assistant acting on behalf of the dependant, who will continue trading until the permit is

no longer valid..

- (2) A permit may be temporarily transferred for a period of no longer than six months with the written approval of the municipality, to a dependent or, where there is no dependent, to an individual nominated by the permit-holder, if the permit-holder is unable to perform his or her functions: Provided that a written affidavit is provided to the municipality stating the nature and period for which the permit-holder requires the permit transfer.
- (3) A dependent or assistant is only permitted to replace the permit-holder for the period stipulated in the affidavit and approved by the municipality.
- (4) A permit-holder may not transfer a permit to any other person in any manner, including but not limited to, by way of lease or sale.
 - (a) permission must be obtained from the Department of Home Affairs in the case of foreign nationals.
 - (b) A South African may only transfer to a foreigner after approval by the municipality and the Department of Home Affairs.
 - (c) In the case of the transfer by foreigner to another foreigner such transfer shall only take place after approval by the municipality and the Department of Home Affairs.
 - (d) In the case of the transfer from a foreigner to a South African such a transfer shall only take place after approval by the municipality and the Department of Home Affairs.
- (5) If a permit holder is refused permission to transfer his or her permit and does not resume trading, the municipality may revoke the permit and in such a case the permit must immediately be returned to the municipality.
 - (a) Should the municipality revoke the licence the municipality must close the business and the business must be declared null and void.
 - (b) Details of such closed businesses should be placed on a database to be shared with relevant departments.
- (6) If a permit holder no longer wishes to trade as an informal trader from the relevant trading bay, the municipality may revoke the permit and in such a case the permit must immediately be returned to the municipality.
- (7) A permit transferred shall not be used for the purposes of any business other than the approved business in the permit.

Prohibitions and restrictions

- 8.(1)** Except in cases where prior approval has been granted by the municipality, no person may carry out a business activity—
- (a) in a garden or park to which the public has a right of access;
 - (b) on a verge, adjacent to—

- (i) a building belonging to, or occupied by an organ of state;
 - (ii) a church, mosque, synagogue or other place of worship;
 - (iii) a building belonging to, or occupied by the municipality;
- (c) at a building declared to be a public monument;
- (d) next to an auto teller bank machine;
- (e) at a place where—
 - (i) it causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;
 - (ii) it causes an obstruction to vehicular traffic; or
 - (iii) it substantially obstructs pedestrians in their use of a sidewalk;
- (f) on a verge adjacent to a building in which business is conducted by a person who sells goods of the same nature as or of a similar nature to goods being sold by the seller concerned;
- (g) on that half of a public road adjacent to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto.
- (2) A person carrying on a business—
 - (a) may not sleep overnight at the place of such business except in cases where prior approval has been granted by the municipality;
 - (b) may not place his or her property on a public road or public place except in cases where prior approval has been granted by the municipality;
 - (c) may not construct a permanent structure on a public road or public place;
 - (d) may not buy goods from establishments that are not complying with relevant regulatory prescripts, sell illegal goods or goods not complying with acceptable standards;
 - (e) may not sell expired items;
 - (f) must ensure that his or her property or area of activity—
 - (i) does not cover an area of a public road, or a public place which is greater than six square metres (with a maximum length of three metres) in extent, unless otherwise approved by the municipality; and
 - (ii) in respect of any sidewalk, leaves an unobstructed space for pedestrian traffic, being not less than one and a half metres wide when measured from any contiguous building to the property or area of activity, and not less than one half metre wide when measured from the kerb line to the property or area of activity;
 - (g) may not conduct business on a sidewalk where the width of such sidewalk is less than three metres;
 - (h) may not place or stack his or her goods in such a manner that it is likely to injure a person or cause damage to property;
 - (i) may not sell illegal goods;

- (j) may not carry on business in such a manner as to –
 - (i) create a nuisance;
 - (ii) create a traffic or health hazard, or health risk, or both;
 - (iii) obstruct access to, or the use of, street furniture and any other facility designed for use by the general public.

Hygiene and waste removal

- 9.(1) A person operating a registered business must—
- (a) ensure that the business complies with health and safety requirements and has the applicable health and safety certificates;
 - (b) keep the business area or site occupied by him or her for the purposes of such business activity 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 refuse receptacle provided by the municipality for the public, or at a dumping site of the municipality;
 - (e) ensure that no smoke, fumes or other substance, odours, or noise, emanating from his or her business activities, causes pollution of any kind.
- (2) The owner of the property where business activities take place must ensure that there is appropriate infrastructure including ablution facilities.

Restricted and prohibited areas

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

- (a) specified hours during which, goods or services in respect of which, business activity is restricted or prohibited;
 - (b) the boundaries of the restricted or prohibited areas; and
 - (c) any other restriction or prohibition against business activity regarding the area in question.
- (2) A municipality must display any such sign, marking or device in such a position and manner as will indicate the restriction or prohibition and the location or boundaries of the area concerned.
- (3) A sign erected in terms of this by-law or the National Business Act serves as sufficient notice of the prohibition or restriction in respect of the area concerned.
- (4) A sign contemplated in subsection (1) may be amended from time to time and displayed by the municipality for the purpose of this by-law and has the same effect as a road sign in terms of the National

Road Traffic Act, 1996.

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

Offences and penalties 11.(1)

A person who –

- (a) contravenes, or fails to comply with, a provision of this by-law;
- (b) fails to comply with a notice issued in terms of this by-law;
- (c) fails to comply with a lawful instruction given in terms of this by-law; or
- (d) who obstructs or hinders an authorised official in the execution of his or her duties under this by-law, is guilty of an offence and must be served with a written warning advising of the offence, the remedial action and applicable times, consequences for failure to redress, and the appeal process.

Enforcement of by-law

12.(1) Authorised officials appointed by the municipality are responsible for monitoring and enforcement of these by-laws and must -

- (a) regularly liaise and co-operate with the relevant departments to ensure compliance with related legislation such as Home Affairs, Health and South African Revenue Services (SARS).
- (2) a municipality may apply its discretion to impound business equipment where continuous transgression without remedy is observed. The business equipment to be released at a fee in line with municipal tariffs.

Repeal of by-law and transitional measures

13.(1) Each municipality must consider the impact of these by-laws on all other by-laws and must repeal sections that conflict with the provisions of these by-laws or amend the applicable by-laws to be in line with the provisions of these by-laws.

- (2) Municipalities are granted a period of six months from the date of promulgation to adopt these by-laws.