



## **DRAFT BUSINESS LICENSING BY LAW**

WHEREAS the *Constitution* authorizes a municipality to pass By-laws;

AND WHEREAS the *Constitution* authorizes a municipality to pass By-laws for municipal purposes respecting systems of approvals and permits;

AND WHEREAS the *Constitution* authorizes a municipality to pass By-laws for municipal purposes respecting the implementation and enforcement of by-laws including providing for inspections to determine if by-laws are being complied with;

AND WHEREAS regulating business licensing within the King Sabata Dalindyebo Municipality desirable;

AND WHEREAS it is deemed expedient to make the by-law which controls and regulates business licensing in the municipality;

NOW THEREFORE THE COUNCIL OF KING SABATA DALINDYEBO LOCAL MUNICIPALITY ENACTS AS FOLLOWS:

## 1. DEFINITIONS AND INTEPRETATIONS

In this By-law unless the context otherwise indicate:

**"Apartment Building"** means a premise, not being a hotel or rooming house, which is divided into not less than three dwelling units, occupied or equipped to be occupied as rental accommodation.

**"Applicant"** means a person or corporation who makes application for a license under the provisions of this By-law.

**"Automobile Rebuilder"** means a person who rebuilds vehicles from parts obtained from wrecking on site one or more other vehicles.

**"Automobile Wrecker"** means a person who removes used parts from vehicles for resale and disposes of the remainder as junk, salvage or scrap.

**"Beauty and Wellness Centre"** means a premise used to improve beauty and wellness through styling, cutting, or chemical treatment of hair and through skin and body treatments, including pedicures, manicures, facials, microdermabrasion, waxing, laser, hydrotherapy, anti-aging, skin rejuvenation therapy, aromatherapy, stone therapy massage, and relaxation massage but excludes fitness centers, personal training centers, and health enhancement centers.

**"Bed and Breakfast"** means a business operation carried on by the members of a family as a home occupation to provide temporary sleeping accommodations, with or without meals being provided, all provided for a prescribed charge on a daily basis, where the maximum length of occupancy by a patron is not more than 30 days in a 12-month period.

**"Bookshop"** means a shop where books are sold.

**"Bone Dealer or Dealer in Used Goods"** means a dealer who sells used goods.

**"Business"** means carrying on a commercial or industrial undertaking of any kind or nature, or providing professional, personal or other services for the purpose of gain or profit.

**"Business Services Office"** means a business which offers services to a person or another business, including but not limited to typing, answering service and faxing.

**"Café Keeper"** means a business which sells light meals and drinks.

**"Carwash"** means an area or structure equipped with facilities for washing automobiles.

**"City"** means the Mthatha Municipality and the geographical area within the boundaries of the municipality where the context so requires;

**"Council"** means the City Council of the King Sabata Dalindyebo Local Municipality and include any municipal councillor or employee to whom the Council has delegated the powers, functions and duties vesting in the Council in relation to this By Law.

**"Dairy shop"** means a building where milk and milk products are sold.

**"Farm Produce Sales"** means a premise used for the retail sale of agricultural and horticultural products which are grown on the same lot as the premises or in the Republic of South Africa

**"Financial Agent"** means a person who carries on the business of lending money, or financing for other persons the sale or purchase of goods or services.

**"Fishmonger or fish fryer"** a person or shop that sells fish for food.

**"Fitness Centre"** means a premise used for the development of physical fitness including health centres, gymnasia, racket and ball courts, and reducing salons if the training or instruction is primarily in group sessions or classes but excludes personal training centres.

**"Fruit & Vegetable Dealer"** means a person or shop that sells fresh fruit and vegetables.

**"Funeral Parlor"** means an establishment where the dead are prepared for burial and cremation.

**"Furniture Shop"** means a shop that sells furniture.

**"Clothing Retail Shop"** means a shop where clothing is sold.

**"General Dealer"** means a shop that sells a wide variety of goods including groceries.

**"Grocery Shop"** means a shop where foodstuffs and drinks are sold.

**"Hairdressing Salon"** means a premise where the primary use is the styling, cutting or chemical treatment of hair.

**"Hair Stylist"** means a person who styles, cuts or treats hair at the residence of a client or at a place of business or premises other than a hairdressing salon.

**"Hardware Store"** means a store where tools and other durable equipment is sold.

**"Health Enhancement Centre"** means a premise used to enhance health through therapeutic touch techniques including acupressure, reflexology, bio-kinesiology, but excludes body rub parlours, fitness centres, beauty and wellness centres, and personal training centres.

**"Hotel"** means a premise providing temporary accommodation by way of furnished sleeping, housekeeping or dwelling units and includes a motel.

**"Ice Cream Vendor"** means a person who sells or offers to sell ice cream and related food items from a vehicle to the general public for immediate consumption. For the purposes of this definition, vehicle includes,

without limitation, carts, wagons, trailers, trucks and bicycles, regardless of the type of motive power employed to move the vehicle from one point to another.

**"Environmental Health Practitioner"** means a practitioner with appropriate academic training registered with the Health Professions South Africa.

**"Laundry"** means a premise used for the business of washing clothes or other fabrics or for the business of supplying linen to others.

**"Licensed Premise (Any Business Primary)"** means a licensed establishment holding a primary license.

**"Livestock Dealer"** means a person who sells animals and birds that are kept in a farm.

**"Motion Picture Film"** means photographic film, pre-recorded videotapes, pre-recorded video disks and includes any other object or device on which or in which there is recorded, by photographic, electronic or other means, the contents of a motion picture, and from which, by the use of a projector, machine of other appropriate technology, the motion picture may be viewed, exhibited or projected.

**"Municipality"** means King Sabata Dalindyebo Local Municipality established by the the Provincial Notice, as published in the Provincial Gazette, Eastern Cape Province, issued in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**"Municipal Manager"** means a person appointed by the Council as the head of the municipal administration or that any person appointed to act in that capacity or powers delegated to him/her or the Municipal Manager's designate;

**"Personal Training Centre"** means a premise used for the provision of physical fitness or personal training including yoga, pilates, and weight loss if the exercise or instruction is primarily on a one-to-one basis, and the premises do not exceed 200 m<sup>2</sup> gross floor area.

**"Pharmacy"** means a premise licensed as a pharmacy under the Pharmacists, Pharmacy Operations and Drug Scheduling Act

**"Recycling Depot"** means a building which is used or intended to be used for collecting, sorting, refunding and redistributing recyclable materials and specifically excludes the processing of recyclable material, other than the breaking of glass bottles.

**"Recycling Plant"** means a premise in which recoverable resources, including newspapers, magazines and other paper products, glass and metal cans, are recycled, reprocessed and treated to return the products to a condition in which they may again be used for production.

**"Restaurant"** means a place where people pay to sit and eat meals that are prepared and served on the premises.

**"Rooming House"** means a building not being a hotel containing rooms used exclusively as sleeping units where lodging for three or more persons is provided.

**"Salvage Yard"** means a premise primarily used for storing, wrecking, crushing, piling and similar handling of vehicles, machinery and other equipment which is otherwise considered unusable and includes a junk yard but does not include a recycling plant or recycling depot.

**"Scrap Dealer"** means a person whose primary business is the collection and delivery of scrap to a licensed salvage yard, recycling plant or recycling depot.

**"Scrap Metal Dealer"** means a scrap metal dealer as defined in Scrap Metal.

**"Spaza Shop"** means an informal convenience shop usually run from home

**“Warehouse”** a large building where raw materials or manufactured goods may be stored prior to their distribution for sale.

**"Wholesale Dealer"** means a person who carries on the business of dealing in a commodity by selling the commodity to retail dealers or to other wholesale dealers or to contractors or to manufacturers for use in their businesses, but does not include a warehouse operator, where the owner of the warehouse does not employ a representative other than the warehouse operator to solicit orders for, or to handle or distribute the commodities.

**“Workshop”** means a room or building where goods are manufactured or repaired.

## 2. SCOPE AND APPLICATION OF BY-LAW

The By-law applies to all owners or operators of businesses in general, whether formal or informal, and their employees within the area of jurisdiction of the Municipality.

## 3. License Required

3.1 No person will carry on a business in the municipality without holding a valid and subsisting license for the business carried on except for those businesses specifically exempted in this By-Law.

3.2. Where a business is carried on in or from more than one premise in the municipality, the business carried on in or from each premise is deemed to be a separate business.

3.3. Where a business is carried on as a partnership, it will be sufficient compliance with this By-law if one license is taken out in the name of the partnership or firm and the license fee is paid for the license.

3.4. No person will in the course of that person's business or otherwise operate or permit to be operated any gaming facility except as otherwise expressly permitted by this By-law or by any other by-law of the municipality as may be in existence at any time, or from time to time.

3.5. A business license is required for every business carried on in the municipality or with respect to which any work or service is performed in the municipality whether or not the business is carried on in or from premises in the municipality.

3.6 All building plans for businesses should ensure that there is an existing business licensing as part of the approval process.

## 4. Application for License

4.1. All applications for licenses under this By-law must be made to the Licensing Division on the application form provided for that purpose.

4.2. Every applicant must make a true and correct statement in writing on the application form disclosing the nature and character of the business to be carried on, the address of the business, and all other facts as are required by the application form.

4.3. Every license issued under this By-law will state that the holder is licensed to carry on the business stipulated in the license in a lawful manner for the periods specified in the license at the premise specified in the license, subject to the terms and conditions specified on the license.

## **5. Period of License**

All licenses granted under this By-law will be issued annually at a specified amount.

## **6. License Fees**

6.1 Every applicant for a license must pay to the Municipality at the time of application, the proper license fees set out in the Council approved tariff and no license will be issued until payment of the fee is made.

6.2 A penalty prescribed by the Council will be added to gross license fees remaining unpaid 30 days after the due date.

## **7. Transfer of License**

7.1 An applicant desiring to obtain a transfer of a license, or interest in a license, issued under this By-law and held by another applicant, must make an application the same as that required to obtain a license under this By-law, and the powers, conditions, requirements, and procedures relating to the granting and refusal of licenses and appeals will apply to the application.

7.2 An applicant who purchases the interest of, or part of the interest of, an applicant licensed under this By-law must not carry on or continue the business without first obtaining a transfer of license or a new license.

7.3 An applicant to whom a license has been issued under this By-law who changes the location of the premises in which the business is carried on must first apply to the Inspector to have the license altered, and the powers, conditions, requirements, and procedures relating to the granting or refusal of licenses and appeals will apply to the application.

## **8. Inspection**

Planning, Public Safety, Every Environmental Health Practitioner and every Law Enforcement Officer is authorized to enter at all reasonable times, any house, place, premises, vehicle, or other place in respect of which a license has been applied for, granted or may be required under this By-law, to ascertain whether the regulations and provisions of this By-law are being obeyed. No person will prevent, obstruct or attempt to prevent or obstruct the entry of a person authorized entry under this Section.

## **9. Refusal of a License**

9. (1) An application for a license may be refused by Council or the Business License Inspector in any specific case, provided that:

(a) the application must not be unreasonably refused; and

(b) Council or the Business License Inspector must give reasons for the refusal.

9. (2) If the Business License Inspector has refused to grant a license, the applicant who is subject to the decision is entitled to have Council reconsider the matter.

## **10. Granting of a License**

10.1 The Business Licensing Division may grant a license under this By-law where the Business Licensing Division is satisfied that the applicant has complied with the requirements of this By-law and the City's by-laws regulating building, zoning, health and sanitation.

10.2 If the application for a license is refused by the Environmental Health Division, the Business Licensing Division must notify the applicant of the right to a reconsideration by the Environmental Health Division. Comments must also be sourced from Planning and Public Safety.

## **11. Compliance with Zoning**

Before a license is granted under this By-law, the Town Planning Division must be satisfied that the use for which the license is sought is not in violation of the Town Planning Scheme, and no license will be issued if the carrying on of the business in or from the premises applied for would be contrary to any KSD By-law.

## **12. Suspension or Cancellation of a License**

12.1. A license may be suspended or cancelled by Council or the Business Licensing Inspector for reasonable cause.

12.2 Without limiting Subsection (11), any one of the following circumstances may constitute reasonable cause:

- (a) the holder fails to comply with a term or condition of the license;
- (b) the holder has ceased to comply with a by-law or has otherwise ceased to meet the lawful requirements to carry on the business for which the holder is licensed or with respect to the premises named in the license;

12.3 Before suspending or cancelling a license, the Business License Officer must give the license holder notice of the proposed action and an opportunity to be heard.

## **13. Approval process**

13.1 The applicant lodges an application for a trading licence to the licensing office together with the following accompanying document:

- Copy of Identity Document;
- CK Document;
- Tax Clearance Certificate or SARS confirmation letter;
- Proof of property ownership (if applicable);
- Lease agreement or confirmation letter from the land lord

13.2 The applicant pays the lodging fees applicable to the current financial year which varies from Established Businesses and Small Businesses and a receipt will be issued.

13.3 The application form is submitted for comments to:

- (a) Environmental Health Practitioners and
- (b) Human Settlement Department

13.4 If the requirements have been set by the respective department, the applicant must comply with those requirements.

13.5 If there are no objections from the respective departments, the Licensing division will issue the license which will be signed by the following three officials:

- (a) Head of Department
- (b) Area Health Environmental Practitioner
- (c) Business Licensing Officer

## 14. OFFENCES AND PENALTIES

Any Person who contravenes any provision of this By-law by:

14.1 (a) doing any act or thing which the person is prohibited from doing;

or

14.2 (b) failing to do any act or thing which the person is required to do is guilty of an offence;

14.3 (c) No person shall hinder, interrupt or cause to be hindered any employee of the City or its contractors, servants and agents or workers, in the exercise of the powers or duties as authorized or required in terms of this By-law.

14.4 Any person who is convicted of an offence pursuant to this By-law is liable to a fine not exceeding R????? imprisonment for not more than one (1) month, or both, and in default of payment of any fine imposed, to imprisonment for a term not exceeding one (1) month.

## 15. LEGISLATIVE FRAMEWORK

The following are, inter alia, major relevant by-laws in relation to major matters regulated by this By Law:

- Constitution of the Republic of South Africa, Act 108 of 1996,
- Business Act No. 71 of 1991,
- Municipal Systems Act, Act 32 of 2000,
- South African National Roads Agency Act; Act 7 of 1998,
- National Road Traffic Act, Act 93 of 1996,
- Spatial Planning and Land Use Management Act, Act 16 of 2013,
- Municipal Finance Management Act, Act 56 of 2003, and
- Intergovernmental Relations and Framework Act, Act 13 of 2005.



**16. TEMPLATE FOR BUSINESS LICENSING**



**For office use only**

**DATE .....**

**REC.NO: .....**

**AMOUNT: .....**

**FORM L1: BUSINESS LICENSING BY LAW**

**APPLICATION FOR A BUSINESS LICENCE TO CARRY ON A BUSINESS WITHIN KSD JURISDICTION**

**1. Name of licensing authority: KING SABATA DALINDYEBO MUNICIPALITY**

**2. State whether this application is in respect of a –**

- (a) New licence                       (b) relocation of business   
(c) Renewal of licence                       (d) an alteration of information

**3. Full name of applicant (name of individual, company, partnership, etc. in whose name the licence should be issued).....**

**4. Trade name of business: .....**

**5. Street address of business premises: .....**

**6. Postal address of business: .....**

**7. Street address of premises where goods will be stored: .....**  
.....

**8. Ward and Village where the business is located**

.....

**9. Licence(s) applied for:**

9.1..... 9.4 .....

9.2..... 9.5.....

9.3..... 9.6.....

**10. If the application is for a business include in the Item 2 of Schedule 1 of the Act,**

**The full name, identification number and the residential address of the person**

**Who will be in effective control of the business?**

10.1 Full Names: .....

10.2 Address: .....

10.3 Identity Number: .....

**11. Number of Employees: .....**

**12. Does the property have Waste Site? (YES/NO) .....**

**13. Does the property have sanitizers & fire hydrant?: .....**

**14. Was the applicant the holder of a hawker's licence which was withdrawn in the  
Twelve months preceding this application? (YES/NO)**

**15. I, ..... certify that the information  
contained in this application is true and correct to the best of my knowledge and belief.**

Signature of applicant: ..... Date .....

Capacity of applicant: .....Date .....

Signature of the owner of property: .....Date.....