

Mbizana, South Africa

Accommodation Establishments By-law, 2017

Legislation as at 24 April 2017

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Mbizana South Africa

Accommodation Establishments By-law, 2017

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The Municipal Manager hereby publishes, in terms of section 13 of the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#)) read with section 162 of the [Constitution of the Republic of South Africa Act 1996 \(Act No. 108 of 1996\)](#) the By-laws Relating to Accommodation Establishments which come into operation on the date of publication thereof.

WHEREAS the Council of the Municipality is vested with legislative authority in terms of the [Constitution of the Republic of South Africa, 1996](#);

AND WHEREAS the Council of the Municipality in the exercise of its functions has the right to regulate accommodation establishments in the municipal area for the benefit of the resident or visiting public;

NOW THEREFORE be it enacted by the Council as follows:

1. Definitions

In these by-laws, words used in the masculine gender include the feminine, the singular includes the plural and vice versa and, unless the context otherwise indicates –

"accommodation establishment" means any place in which accommodation is provided for gain to four or more people, with or without meals, but excludes a private home;

"authorized official" means:

- (a) an official of the Municipality; or
- (b) an official of another municipality; or
- (c) an official of another organ of state; or
- (d) a person contracted by the Municipality and with whom the Municipality has concluded an agreement either directly or on an agency basis for the rendering of services in terms of these by-laws and/or to which or to whom the Municipality has delegated a duty, function or power under these by-laws, provided that the official or person concerned must be a duly registered environmental health officer or health practitioner;

"Council" means the Council of the Municipality or any committee, political office bearer or official thereof acting by virtue of any power entrusted or delegated to it or him in terms of legislation with regard to the application and implementation of these by-laws;

"Compliance Notice" means a notice issued in terms of section 6 to comply with these by-laws or with the conditions of a permit issued in terms of these by-laws;

"dormitory" means a sleeping room in which sleeping accommodation is provided for four or more persons;

"permit" means a public health permit granted by the Municipality in terms of section 4;

"Municipality" means the Mbizana Local Municipality and includes the Council thereof and should the context so require also the authorized official;

"**Prohibition Notice**" means a notice issued in terms of section 7;

"**public health**" means the mental and physical health and well-being of people in the municipal area;

"**public health hazard**" means any actual threat to public health, and without limitation, includes –

- (a) unsanitary conditions;
- (b) circumstances that make it easier for a communicable disease to spread;
- (c) circumstances that make food or drink (including water for domestic consumption) unhygienic or unsafe to eat or drink; and
- (d) circumstances that allow pests to infest any place where they may affect public health;

"**public health nuisance**" means the use of any premises or place in a manner that creates conditions that significantly increase the risk of a public health hazard occurring or that compromises any aspect of public health to an extent that is more than trivial or insignificant.

2. Requirements for premises

- (1) Except under authority of permit issued by the Municipality in terms of these by-laws, no person may operate an accommodation establishment on premises that do not comply with the following requirements:
 - (a) No room wholly or partly used by persons for sleeping in may be occupied by a greater number of persons than will allow:
 - (i) less than 11,3m² of free air space and 3,7m² of floor space for each person over the age of 10 years; or
 - (ii) less than 5,7m² of free air space and 1,9m² of floor space for each person under the age of 10 years.
- (2) No latrine, passage, staircase, landing, bathroom, cupboard, outbuilding, garage, stable, tent, storeroom, lean-to, shed, cellar or loft may be used as sleeping accommodation.
- (3) If a dormitory is provided on the premises –
 - (a) a single bed, manufactured of metal or some other durable material and equipped with a mattress, must be provided for every person housed in the dormitory;
 - (b) a separate locker must be provided for every person making use of the dormitory for safeguarding the person's personal clothing and other possessions;
 - (c) every bed in a dormitory must be placed such that its sides are at least 1m away from any part of any other bed.
- (4) An accommodation establishment must be provided with –
 - (a) an area for the preparation and cooking of food, adequate for the use of and easily accessible to any occupier residing in the premises;
 - (b) adequate separate wash-up facilities; and
 - (c) where meals are provided to persons housed on the premises –
 - (i) a dining-room or adequate dining area with tables and chairs or benches; and
 - (ii) unobstructed floor area (including the area occupied by tables, chairs and benches) of at least 1.2m² for every seat provided for dining purposes.
- (5) An accommodation establishment must be provided with one or more showers that must each be –
 - (i) suitably placed in a separate compartment;

- (ii) easily accessible to all occupiers of the premises; and
 - (iii) fitted with waste pipes which comply with the provisions of the National Building Regulations and Building Standards Act, 1977 ([Act No. 103 of 1977](#)), as amended.
- (6) A bath fitted with a waste pipe may be substituted for each shower referred to in subsection (5) hereof.
- (7) The facilities referred to in subsections (5) and (6) hereof must be designated for the different sexes.
- (8) An accommodation establishment must be provided with sanitary facilities as prescribed in the National Building Regulations and Building Standards Act, 1977, and such fixtures must be designated for the different sexes.
- (9) An accommodation establishment must be provided with an adequate supply of hot and cold running potable water.
- (10) All rooms in an accommodation establishment must be provided with adequate ventilation and lighting as prescribed in the National Building Regulations and Building Standards Act, 1977.
- (11) Openings in rooms in accommodation establishments such as doors, windows or fanlights may not be obstructed in a manner that interferes with the lighting or cross ventilation they provide.
- (12) A separate room with metal bins or canvas laundry bags must be provided for the storage of dirty articles used in connection with the accommodation establishment, pending removal thereof to be laundered; and
- (13) When articles used in connection with the accommodation establishment are laundered on the premises, a separate approved washing, drying and ironing area equipped with the necessary facilities for this purpose must be provided.
- (14) A store-room for the storage of furniture and equipment and a separate linen room with cupboards or shelves for the storage of clean bed and other linen, towels, blankets, pillows and other articles used in connection with the accommodation establishment, must be provided.
- (15) All walls and ceilings must have a smooth finish and be painted with a light-coloured washable paint, or have some other approved finish;
- (16) The floor surface of every kitchen, scullery, laundry, bathroom, shower, ablution room, toilet and sluice room must be constructed of concrete or some other durable, impervious material brought to a smooth finish; and
- (17) The floor surface of every habitable room must be constructed of an approved material.
- (18) The following facilities must be provided for people who are employed and also reside on the premises:
- (a) sleeping quarters equipped with a bed, mattress and locker that comply with the provisions of subsections (1), (2) and (3) for each employee; and
 - (b) where employees are not provided with meals on the premises, food preparation and dining facilities that comply with the provisions of subsection (3)(c).
- (19) Adequate changing facilities must be provided for non-resident employees.
- (20) Adequate ablution and sanitary facilities that comply with the provisions of subsection (6) and subsection (8) must be provided for resident and non-resident employees.
- (21) An adequate refuse holding area must be provided and an approved refuse removal system must be maintained.
- (22) All walls, floors and roofs must be constructed in a manner that prevents wind and rain entering the premises or dampness entering the interior surfaces of the walls and floors.

- (23) All accesses to an accommodation establishment must have a door which when closed, prevents the wind or rain entering the premises; and
- (24) All windows must be constructed in a manner that prevents rain entering the premises when the windows are closed.

2. Duties of the operators of accommodation establishments

Every person who operates an accommodation establishment must –

- (a) keep the premises and all furniture, fittings, appliances, equipment, containers, curtains, covers, hangings and other soft furnishings, table linen, bed linen and other bedding, towels and cloths of whatever nature, used in connection with the accommodation establishment, in a clean, hygienic and good condition at all times;
- (b) clean and wash any bed linen, towel, bath mat or face cloth after each use by a different person;
- (c) take adequate measures to eradicate pests on the premises;
- (d) provide a container made of a durable and impervious material, equipped with a close-fitting lid, in every toilet used by females;
- (e) provide towel rails or hooks in every bathroom and in every room in which there is a wash-hand basin or shower;
- (f) store all dirty linen, blankets, clothing, curtains and other articles used in connection with the accommodation establishment in the manner referred to in section 2(12);
- (g) store all clean linen, towels, blankets, pillows and other articles used in connection with the accommodation establishment in the manner referred to in section 2(13);
- (h) keep all sanitary, ablution and water supply fittings in good working order;
- (i) keep every wall, surface and ceiling, unless constructed of materials not intended to be painted, painted at regular intervals to ensure that the area painted remains clean and in a good state of repair; and
- (j) handle refuse in the manner referred to in section 2(21).

3. Permit to operate an accommodation establishment

- (1) Any person intending to obtain a permit to operate an accommodation establishment must apply to the Municipality in writing in a form stipulated by the Municipality, prior to operating such establishment.
- (2) When the Municipality receives an application for a permit, it must ensure that the relevant premises are inspected by the authorized official as soon as reasonably possible.
- (3) Before deciding whether or not to approve an application referred to in subsection (1), the Municipality –
 - (a) must ensure that any persons in the vicinity of the premises whose health or wellbeing may be affected if the premises are used for an accommodation establishment, have been consulted and have had an opportunity to make representations with regard to such proposal; and
 - (b) may request the applicant to provide any further information which the Municipality considers relevant to enable it to make a properly informed decision.

5. General terms applicable to permits

- (1) A permit issued in terms of these by-laws –
 - (a) is not transferable from one person to another; and
 - (b) applies only to the premises specified in the permit.
- (2) Every permit must –
 - (a) specify the address and other relevant details regarding the location of the premises concerned;
 - (b) describe the premises concerned;
 - (c) describe the authorized use or activity concerned;
 - (d) specify terms and conditions, if any; and
 - (e) indicate when it expires.
- (3) The Municipality may levy a fee for considering and granting a permit in terms of these by-laws and in accordance with the provisions of the applicable tariff policy.
- (4) The Municipality may refuse to consider an application until it has been provided with the information that it reasonably requires to make an informed decision and until the prescribed fee (if any) has been paid.

6. Compliance notice

- (1) If an authorized official after inspecting the premises of an accommodation establishment reasonably believes that a public health hazard or public health nuisance exists on such premises or that the premises are being used for a purpose in contravention of these by-laws, he may serve a compliance notice on one or more of the following persons:
 - (a) the owner of the premises;
 - (b) the occupier of the premises;
 - (c) any person apparently in charge of undertaking the aforesaid use on the premises.
- (2) A compliance notice must state –
 - (a) why the authorized official believes that these by-laws are being contravened;
 - (b) the measures that must be taken –
 - (i) to ensure compliance with these by-laws; or
 - (ii) to eliminate or minimise any public health nuisance;
 - (iii) the time period within which the measures must be taken;
 - (iv) the possible consequences of failing to comply with the notice; and
 - (v) how to appeal against the notice.
 - (c) If a person fails to comply with a Compliance Notice that requires a particular action to be taken, the Municipality may –
 - (i) take the required action specified in the compliance notice; and
 - (ii) recover, as a debt, from the person to whom the notice was given, the costs and expenses reasonably incurred in taking the required action; or

- (iii) direct that a prohibition notice be served on such person in terms of section 7 of these by-laws.

7. Prohibition notice

- (1) An authorized official may, after inspecting premises apparently used as an accommodation establishment contrary to these by-laws, serve a prohibition notice on the owner, occupier or user of such premises prohibiting the premises from being so used and requiring measures to be taken to ensure that this occurs.
- (2) The authorized official must give the person on whom he intends serving a prohibition notice a reasonable opportunity to make representations before serving the notice unless he reasonably believes that the delay in doing so would significantly compromise public health, in which case the person on whom a prohibition notice is served must be given reasonable opportunity to make representations why it should be withdrawn.
- (3) A prohibition notice must state –
 - (a) the reasons for serving the notice;
 - (b) whether or not the Municipality will withdraw the notice if certain measures are taken, and if so, the measures that must be taken;
 - (c) the possible consequences of failing to comply with the notice; and
 - (d) how to appeal against the notice.
- (4) Unless a prohibition notice provides otherwise, it comes into effect when it is served under subsection (1) and remains in force until it is withdrawn.
- (5) The authorized official must as soon as possible affix a copy of the notice in a conspicuous position on the premises.
- (6) It is a defence for any person charged with failing to comply with a prohibition notice to prove that –
 - (a) he did not know of the existence of the prohibition order and could not reasonably be expected to have known of its existence; and
 - (b) he had complied with the prohibition notice within 48 hours of the time that the notice was affixed to the premises in terms of subsection (5).

8. Withdrawal of prohibition notice

- (1) The authorized official must, within 48 hours of receiving a written request for the withdrawal of a prohibition contained in a Prohibition Notice, carry out an investigation of the premises.
- (2) After completing the investigation, the authorized official must inform the person on whom the Prohibition Notice was served or that person's agent in writing, whether or not the prohibition has been removed or withdrawn.
- (3) The Municipality may charge the owner or occupier of any premises where an investigation is carried out in terms of subsection (1), a fee as prescribed in the applicable tariff policy for undertaking the investigation.

9. Suspension, cancellation and amendment of permits

- (1) An authorized official may suspend or cancel a permit with immediate effect if –
 - (a) he reasonably believes that it is urgently necessary to do so to eliminate or to reduce a significant risk to public health posed by a public health hazard or a public health nuisance; and
 - (b) the holder of the permit fails to comply with a compliance notice that states that the permit may be suspended or cancelled without further notice if the holder fails to comply with such notice.
- (2) An authorized official may suspend or cancel a permit after giving the holder a reasonable opportunity, not exceeding 10 working days, of making representations as to why the permit should not be suspended or cancelled if –
 - (a) he reasonably believes that it is desirable to do so to eliminate or reduce the risk to public health posed by a public health hazard or a public health nuisance; or
 - (b) the holder of the permit fails to comply with a compliance notice.
- (3) An authorized official may amend a permit by endorsing the permit or by written notice to the holder, if he reasonably believes that it is necessary to do so to protect public health or to take account of changed circumstances since the permit was issued.

10. Appeals

- (1) A person whose rights are affected by a decision taken by any authorized official under these by-laws may appeal against the decision by giving written notice of the appeal and reasons to the Municipal Manager of the Municipality within 21 days of the date of the notification of the decision.
- (2) The Municipal Manager must promptly submit the appeal to the appropriate appeal authority referred to in section 62 of the Local Government: Municipal Systems Act, 2000.
- (3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (4) An appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

11. Offences and penalties

A person is guilty of an offence and liable on conviction to a fine, or in default of payment to imprisonment for a period not exceeding 6 months, if he –

- (a) contravenes or fails to comply with any provisions of these by-laws;
- (b) fails to comply with any notice issued in terms of these by-laws;
- (c) fails to comply with any lawful instruction given in terms of these by-laws; or
- (d) obstructs or hinders any authorized official in the execution of his duties under these by-laws.

12. Delivery of notices

- (1) A notice, order or other document is to be regarded as having been properly served if –
 - (a) it has been delivered to that person personally;
 - (b) sent by registered post to the person to whom it is addressed at his or their last known address;

- (c) it is served on a person apparently not less than 16 years of age and apparently in charge of the premises at the addressee's last known address;
 - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided for in subsections (1)(a), (b) or (c); or
 - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the premises to which it relates.
- (2) A notice, order or other document that may in terms of these by-laws be served on the owner or occupier of premises –
- (a) may be addressed to the owner or occupier of the specified premises and need not name the owner or occupier; and
 - (b) if the Municipality does not know the address of the owner or occupier of the premises and cannot easily obtain it, the notice, order or other document is to be regarded as having been properly served if it is affixed to a conspicuous place on the premises.

13. Waiver of provisions

- (1) The Municipality may, if it deems it desirable to do so in the public interest, waive compliance with or relax the provisions of these by-laws: provided that any person whose rights are adversely affected by such waiver or relaxation will not be bound thereby.
- (2) In each case in which such waiver or relaxation has been granted to any person, the Municipality must serve a written notice upon such person citing the relevant provision waived or relaxed and the extent to which such provision has been waived and, in addition, the Municipality must keep a record containing an identical copy of each such notice, which record must be available for inspection by members of the public at the offices of the Municipality.

14. Repeal of by-laws

- (1) Any by-law adopted by the Municipality or a municipality now forming an administrative unit of the Municipality and relating to any matter regulated by these by-laws are, from date of promulgation of these by-laws, hereby repealed.
- (2) Any permission obtained, right granted, condition imposed, activity permitted or anything done under a repealed law is deemed to have been obtained, granted, imposed, permitted or done under the corresponding provision (if any) of these by-laws, as the case may be.