



BY-LAW FOR BUSINESS LICENCES, PERMITS AND BUSINESS RECOGNITION PERMITS

Contents

1. Preamble	5
2. Definitions	5
3. Objectives	8
4. Applicability of the By-law	8
5. Trading hours	9
6. Appointment of Compliance Officer	9
7. Freedom to engage in business activities.....	9
8. Designated business areas and sites	10
9. Issuing of business licences.....	10
10. Issuing of business permits.....	11
11. Issuing of business recognition permits	11
12. Proactive steps to be undertaken by Municipality	12
13. Registration and permitting of business activities.....	12
14. Transferability of Business licence.....	13
15. Prohibitions and restrictions	14
16. Hygiene and waste removal.....	15
17. Offences and penalties	15
18. Appeals.....	16
19. Enforcement of by-law	16

1. Preamble

Whereas sections 152(1) and 153(a) of the Constitution of the Republic of South Africa, 1996 ("Constitution"), require 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 Businesses Act, 1991 (Act No. 71 of 1991), provides for municipalities to declare and prohibit trading in zones within their jurisdictional areas;

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 businesses will transform the economy,

Be it therefore enacted by the Municipal Council of Senqu Municipality.

2. Definitions

- In this By-Law, 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" or compliance officer" means a person who is authorised to implement and enforce the provisions of this By-law by virtue of his or her—
 - declaration as a peace officer as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
 - appointment as a police officer as contemplated in the South African Police Service Act, 1995 (Act 68 of 1995);
 - a traffic officer appointed in terms of section 3 of the Road Traffic Act, No. 29 of 1989 or section 3A of the National Road Traffic Act No. 93 of 1996 as the case may be;
 - appointment as a law enforcement officer or traffic officer by the Municipality and declaration as peace officer as contemplated in section 334 of the Criminal

Procedure Act, 1977 (Act 51 of 1977); or

- appointment by the Municipality as a compliance officer or an inspector;
- **"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 an enterprise, an enterprise organisation or a co-operative as categorised in the National Small Business Act;
- **"businesses act"** means the Businesses Act, 1991 (Act No. 71 of 1991); **"business activity"** means the selling of goods, or the supplying or offering to supply a service for remuneration;
- **"business permit"** means a annual permit issued by Senqu Municipality for formal businesses operating in an urban area but does not require a business licence as per the Businesses Act 71 of 1991;
- **"business Licence"** means an annual licence issued by Senqu Municipality for businesses specified in the Businesses Act, 1991 Act No.71;
- **"business recognition permits"** means a document which is valid for a year from date of issue, issued by Senqu Municipality on request by the user which acknowledges that the business is operating within the municipal area;
- **"foreigner"** means an individual who is neither a South African citizen, nor a permanent resident, but is not an illegal foreigner in terms of the Immigration Act, 2002 (Act No. 13 of 2002);
- **"goods"** means a product marketed for human use or consumption;
- **"illegal goods"** means—
 - goods which may not have been lawfully acquired or disposed of;
 - goods that are prohibited from sale or distribution under any applicable national, provincial, or municipal law;
 - counterfeit goods as defined in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997);
 - goods that are required to be, but have not been, imported or produced in terms of the provisions of the Customs and Excise Act, 1964 (Act No.91 of 1964);
 - stolen goods; or
 - goods that do not meet mandatory safety or quality standards as prescribed by relevant legislation;
- **"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;

- **“mobile street trader”** means a street trader that does not use a demarcated stand and conducts street trading from a cart, portable container or receptacle as per the By-Law on Businesses and Street Trading, 2017;
- **“Municipality”** means the Senqu Municipality and includes the Council, any executive councillor, or committee established by the Municipality, or any employee thereof, or duly authorised agent thereof acting in connection with this By-law by virtue of a power vested in the Municipality and delegated to such employee or agent;
- **“Minister”** means the Minister responsible for local government;
- **“Municipal Council”** means a municipal council referred to in section 157(1) of the Constitution;
- **“Municipal Manager”** means a person appointed in terms of section 54A of the Municipal Systems Act, as the head of administration of the municipality;
- **“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- **“nuisance”** means conduct or behaviour by a person, an organisation, business or institution 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 a situation or condition in or on private property or in a public place or anywhere in a municipality which causes damage, annoyance, inconvenience, noise pollution 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 or private road, open or public space or private space;
- **“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;

- **"sell"** means exchange, offer, display, deliver, supply or dispose of, for sale or authorise, direct or allow a sale;
- **"services"** means activities or value created, generated or performed for human consumption;
- **"sidewalk"** means a sidewalk as defined in section 1 of the National Road Traffic Act; **"Spatial Planning and Land Use Management Act"** means the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);
- **"street trader"** means a person who has been issued with an annual permit entitling him or her to carry on street trading on a demarcated stand, or within a specified management zone in the case of a mobile street trader as per the By-Law on Businesses and Street Trading, 2019;
- **"trading hours"** means the hours during which the selling of goods and services may occur.
- **"urban area"** means a registered township, town in terms of town planning legislation or a village;

3. Objectives

1. The objectives of this by-law are to—

- facilitate inclusive spatial and economic development;
- provide norms and standards for the establishment and management of formal enterprises;
- raise awareness of applicable laws and regulations affecting businesses and
- support small businesses to grow and participate in the mainstream economy.

4. Applicability of the by-law

This bylaw shall be applicable in respect of all businesses situated within the area of jurisdiction of the Municipality apart from:

- A business which is carried out by the State or a local authority.
- A business which is carried on by a charitable, religious, educational, cultural or agricultural association, organization or institution of a public nature, if all profits derived from the business are devoted entirely to the purposes of that or any other such association, organization or institution.
- A business which is carried out by a social, sports or recreation club which is a non-proprietary club and restricts the business to the sale or supply to its members and their guests of foodstuffs for consumption on or in the business premises;
- A business where the meals concerned are prepared and sold in a private dwelling.

5. Trading hours

1. The Municipality has determined the trading hours for the different types of businesses to be from 7 am – 7pm (19h00) Monday to Saturday, 7 am – 13h00 on Sunday apart from establishments selling alcohol.
2. A registered person may apply to the Municipality for a departure from the trading hours referred to in subsection (1) on the approved form.
3. The Municipality may depart from the trading hours referred to in (1) in the interests of the community.

6. Appointment of Compliance Officer

1. The Municipality may appoint or designate a person or employee to serve as a compliance officer for purposes of compliance and enforcement monitoring of this By-law.
2. A compliance officer shall take all lawful, necessary and practicable measures to enforce the provisions of this By-law.
3. The Municipality shall issue each compliance officer with a written appointment stating that he or she has been appointed for purposes of this By-law or with an identification card that contains the municipal logo, department and name of the officer

7. Freedom to engage in business activities

1. Subject to subsection (2) any person that has a business licence or permit 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 businesses, to be owned and operated by foreigners in line with all the relevant legislation.
3. In determining the quotas a municipality must ensure, amongst others, **that a proportion of the total staff employed in the business are South African citizens or permanent residents in line with all relevant legislation.**
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. applicable permits or licencing requirements;
 - c. other applicable municipal by-laws and policies; and
 - d. this by-law.
5. A person may not carry on a business activity defined in the Businesses Act 71 of 1991 within the area of jurisdiction of a municipality unless that person is a holder of a business licence issued or transferred to him or her by the municipality.
6. A person may not carry on a business activity within the jurisdiction of a

municipality unless that person is a holder of a business permit issued or transferred to him or her by the municipality.

8. Designated business areas and sites

1. The 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, retail and industrial activities in urban areas; and
 - b. demarcate business areas and sites to promote inclusive economic development.
2. The Municipality may, by resolution—
 - a. extend, reduce, or disestablish a 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 from 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; or
 - c. where possible, provide infrastructure for businesses that are leasing.

9. Issuing of business licences

1. The Municipality must issue an annual business licence if it is properly applied for, unless—
 - a. the business licence holder does not comply with the relevant provisions of this by-law;
 - b. the goods or services provided by the business are illegal; or
 - c. the business premises do not comply with the requirement relating to town planning or the safety or health of the public, building regulations or any law which applies to those premises.
2. The Municipality must be satisfied that the applicant will be in actual and effective control of the business.
3. The Municipality may grant the business licence on condition that—
 - a. the goods and services sold are legal; and
 - b. the business premises comply with the requirement relating to town planning, sale and consumption of alcohol or the safety or health of the public, or any law which applies to those premises.

4. The Municipality may, on application by a permit holder—

- a. amend a condition;
- b. revoke a condition; or
- c. indicate that the condition specified in the permit is complied with.

10. Issuing of business permits

1. The Municipality must issue a business permit if it is properly applied for a period of a year. The business permit is for business activities that are not listed under the Businesses Act 71 of 1991.
2. The Municipality must issue a business permit if it is properly applied for, unless—
 - a. the business permit holder does not comply with the relevant provisions of this by-law;
 - b. the goods or services provided by the business are illegal; or
 - c. the business premises do not comply with the requirement relating to town planning, building regulations or any law which applies to those premises and the type of business activity.
 - d. The municipality is not satisfied that the applicant will be in actual and effective control of the business.
3. The municipality may grant the business permit on condition that—
 - a. the goods and services sold are legal; and
 - b. the business premises comply with the requirement relating to town planning, building control, safety or health of the public, or any law which applies to those premises.
 - c. The Municipality may,
 - i. amend a condition;
 - ii. revoke a condition; or
 - iii. indicate that the condition specified in the permit is complied with.

11. Issuing of business recognition permits

1. The Municipality must issue a business recognition permit if it is properly applied for a period of a year. The business recognition permit is for business activities which occur in rural areas and that are not listed under the Businesses Act 71 of 1991 and mainly agricultural in nature or pursued for a residential home such as clothes making.
2. The municipality must issue a business recognition permit if it is properly applied for, unless—
 - a. the business owner is not a resident of the Municipality;
 - b. the goods or services provided by the business are illegal
3. The business recognition permit states that the business operates in the Municipal area at a certain address. The permit is valid for one calendar year

from date of issue.

4. The Municipality may revoke the permit if it is used to fraudulently obtain funding utilising the municipality as surety.

12. Proactive steps to be undertaken by Municipality

1. The Municipality must perform its functions and exercise its powers to—
 - a. build the operational and management capacity of entrepreneurs and small businesses through workshops, training or mentoring;
 - b. conduct business compliance and awareness workshops;
 - c. facilitate skills development and business development support services for businesses;
 - d. facilitate access to infrastructure for businesses; and
 - e. facilitate access to markets for businesses.

13. Registration and permitting of business activities

1. The Municipal Council must delegate the authority to deal with the registration, permitting and enforcing of the by-law to the Municipal Manager or their delegated official.
2. The delegated official is 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 and the timely processing of applications within a set period;
 - d. reviewing and approving applications for licencing including—
 - receiving, reviewing and approving applications for licencing within a set period;
 - investigating the feasibility of the application;
 - submitting the application to the delegated authority; and
 - issuing of businesses licences and permits;
 - e. resolving complaints and disputes occurring between the municipality and a business; and
 - f. facilitating efficiency and municipal responsiveness in licencing businesses.
 - g. The enforcement of the bylaw will be carried out a municipal peace officer.
 - h. Application forms for licencing or permitting can be accessed physically at the

municipal offices and on the municipal website.

3. The delegated official is responsible to establish and maintaining a database of all businesses operating in the municipal area and a database of registered businesses which will contain the following information and must be managed in accordance with PAIA guidelines:
 - a. The full name and surname of the business owner;
 - b. the identity number of the business owner concerned;
 - c. the nationality of the business owner
 - d. the physical address of the business concerned and its geographical co-ordinates;
 - e. description of the property;
 - f. the location where the business concerned is authorised by such registration to carry on business;
 - g. a description of the goods or services that the business concerned is authorised by such registration to sell or provide;
 - h. a distinguishing registration number;
 - i. citizenship status, passport number, section 22 asylum seeker permit, section 24 refugee permit, valid visa allowing foreign national to be in the Republic to work or conduct business as verified by the Department of Home Affairs; and
 - j. any other information that may be required by this by-law or any other law such as building control, environmental health and safety, eastern cape liquor board etc.
 - k. The applicant must provide a sworn affidavit stating that he or she is not engaged in the trade of illegal goods as defined in this by-law and that his or her business operations are within applicable norms and standards.
 - l. The municipality reserves the right to conduct background checks on applicants, including liaising with law enforcement agencies, to verify the legality of their business activity.
 - m. A registered business must be issued with a business licence or permit that must be displayed and be available for inspection at all times.
 - n. 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.

14. Transferability of Business licence or permit

1. In the event of the death of a licence or permit-holder and the loss of income generated which results in the dependents of the deceased permit-holder being placed under undue or severe economic hardship, a permit or licence may be transferred, by the municipality, to a dependent, or an assistant acting on behalf of the dependent, who may continue trading until the licence is no longer valid.
2. A licence or permit holder may not transfer a permit to any other person in any manner.
3. If a licence or permit holder no longer wishes to trade, the municipality must

revoke the licence or permit and in such a case the licence or permit must immediately be returned to the municipality.

4. A licence or permit is issued to a holder and a specific address. Should the holder change the location of the business, they will have to apply for a new licence or permit.

15. Prohibitions and restrictions

1. Except in cases where prior approval has been granted by the municipality due to exceptional circumstances such as natural disaster or where the business is operating from residential units or structures, a person carrying on a business—
 - (a) may not sleep overnight at the place of such business;
 - (b) ensure that there is no interleading door or window from the business into the residential part of the property unless approval has been granted by the municipality due to the age or structural issues of the property.
 - (c) may not place his or her property on a public road, except in cases where prior approval has been granted by the municipality;
 - (d) may not buy goods from an establishment that does not comply with relevant regulatory prescripts;
 - (e) may not sell expired items;
 - (f) must ensure that his or her property or area of activity—
 - (i) in respect of a 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 place or stack his or her goods in such a manner that such goods are likely to injure a person or cause damage to property;
 - (h) may not purchase, sell, distribute or store illegal goods or goods that do not comply with acceptable standards;
 - (i) must maintain records of the identification of his or her suppliers and be able to provide proof of the legitimate sourcing of the goods upon request by an authorised official; and
2. A business may not occur in the following area:
 - a. on a verge as defined in section 1 of the Road Traffic Act, 1989 25 (Act No. 29 of 1989), contiguous to-
 - (i) a building belonging to, or occupied solely by, the State or a local authority;
 - (ii) a church or other place of worship;
 - (iii) a building declared to be a national monument under the National Monuments Act, 1969 (Act No. 28 of 1969)

- b. on a verge so defined contiguous to a building in which business is being carried on by any person who sells goods of the same or a similar nature as goods being sold by the street vendor, peddler or hawker concerned, without the consent of that person;
- c. on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto;
 - (dd) in a garden or park commonly used by the public or to which the public has the right of access;
 - (ee) at any other place commonly used by the public or to which the public has the right of access.

16. Hygiene and waste removal

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. ensure that the food sold in the business is not contaminated by insecticides, pesticides, or any poisonous substance;
 - c. keep the business area or site occupied by him or her for the purposes of such business activity, in a clean and sanitary condition;
 - d. keep his or her property in a clean, sanitary and well-maintained condition;
 - e. 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;
 - f. ensure that no excessive smoke, fumes or other substance, odours, or noise, emanating from his or her business activities, causes pollution of any kind;
 - g. ensure that the necessary recycling methods are utilised; and
 - h. dispose of hazardous and e-waste in the correct manner.
2. The owner of the property where business activities, including selling prepared meals or beverages, take place, must ensure that there is appropriate infrastructure, including ablution facilities.

17. Offences and penalties

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 or causes or permits any other person to so obstruct or hinder the compliance officer:
 - e. operates a registered premises contrary to the trading hours.
 - f. willfully and with intent provides false or misleading information;
 - g. unlawfully prevents a compliance officer entry to his or her premises or causes or permits any other person to prevent entry;
 - h. refuses or fails to provide to a compliance officer such

information as is required to allow a compliance officer to perform a function in terms of this by-law;

- i. impersonates a compliance officer is guilty of an offence;
2. Any person convicted of an offence in terms of this by-law, shall be liable upon conviction to a fine or imprisonment or to both such fine and imprisonment.
3. A person convicted of an offence under this by-law who, after conviction, continues with the conduct in respect of which he or she was so convicted, is guilty of a continuing offence and upon conviction is liable to a fine or to imprisonment, or to both such fine and imprisonment, in respect of each day on which he or she so continues with that conduct.
4. A person found to be transgressing any provision of this by-law must—
 - a. on a first transgression, be served with a written warning notice informing that person of the transgression and that his or her business licence or permit may be cancelled immediately if he or she does not remedy the transgression within a reasonable time based on industry or sector trends; and
 - b. on a subsequent transgression, be served with a written notice informing that person of the transgression and that, subject to an appeal process, his or her business licence is immediately cancelled and that he or she will be barred from reapplying for a licence in any municipality for a period of five years after the subsequent transgression.

18. Appeals

1. A person who feels aggrieved by the decision of the municipality may lodge an appeal within a period of 21 days after receipt of the application outcome or within such extended period as may be agreed upon between the municipality and the applicant concerned.
2. During the appeal process it is assumed that the application was unsuccessful.

19. Enforcement of by-law

1. An authorised official appointed by the municipality is responsible for monitoring and enforcement of this by-law and must regularly liaise and co-operate with officials of the Department of Home Affairs, the Department of Health, JGDM and the South African Revenue Service to ensure compliance with relevant and applicable legislation.
2. The Municipality may—
 - a. apply its discretion to impound business equipment where continuous transgression without remedy is observed; or

- b. release the business equipment at a fee in line with municipal tariffs.
- 3. The Municipality may impound goods on reasonable suspicion that such goods are expired or illegal. Goods that are confirmed to be expired or illegal must be handed over to the relevant government body for destruction.
- 4. The Municipality must—
 - a. conduct regular inspections of businesses to verify that they are registered and that the products being sold are legal and comply with applicable regulatory requirements or norms and standards;
 - b. collaborate with national and provincial law enforcement agencies to share information and conduct joint operations;
 - c. implement a confidential reporting system for the public and other traders to report suspected illicit trade activities;
 - d. subject to the Protection of Personal Information Act, (Act No. 4 of 2013), implement a central repository of individuals whose licences have been cancelled due to non-compliance with the by-law and share details when requested by other organs of state.