

# FETAKGOMO TUBATSE LOCAL MUNICIPALITY



## BY-LAW FOR THE REGULATION OF SMME'S ON RESIDENTIAL STANDS

**DRAFT!!!!**

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## **1. BACKGROUND**

There are currently unregistered and uncontrolled Spaza Shops, Car Wash, Containers and micro businesses (hair salons, panel beaters, mechanics) on residential stands, within the jurisdictions of Fetakgomo Tubatse Local Municipality. The existence of these businesses indicates an existing demand for such a service within residential areas, especially where communities are less mobile and existing business nodes are out of reach.

### **Functions**

The primary function of a Tuck/Spaza Shop is to provide the occupant of a residential unit with an opportunity to use his/ her property for a small- scale economic activity and thus generating income without negatively impacting on adjoining properties. Another function is to provide a range of household goods to the surrounding communities, within walking distance.

Given the functions above, it is clear that a Tuck/Spaza shop must not be confused with retail /business facilities on stands located along activity streets or nodes and serving a wider community at a larger scale. In addition, an ERF on which a Tuck/Spaza shop is operated should retain its primary use as residential.

## **2. APPLICATION OF THE BY-LAW**

- a.** This By-law applies to home-based small businesses that are located either in (part of) the residential dwelling, or on the residential property attached or adjacent to the dwelling in areas that are zoned:
  - (i) Residential: in which case special consent is required through the town planning procedures, as well as business licensing through the appropriate section of the municipality
  - (ii) Mixed use (Bugersfort/Steelport towns Centre): in which case town planning special consent is not required; a business license is however, still required.

## **3. OBJECTIVE OF THE BY LAW**

The objective of this by-law is to manage and regulate land uses within the municipality, with special focus on Spaza shops, Carwash, Containers and other micro-business on residential stands to:

- a.** Ensure peace and harmony between neighbor's and within our communities

- b. Uplift the livelihoods of our people, by allowing people to do business at a minimal and manageable scale.
- c. To encourage entrepreneurship.
- d. To reduce unnecessary spending of public funds.
- e. Setting guidelines to evaluate applications for Spaza Shops.
- f. Promoting harmonious development and protecting the residential character of the surrounding areas.
- g. Promoting small businesses and boosting the economic status of the Municipality.

#### **4. FACTUAL SITUATION**

There is a mushrooming of informal small, medium and micro enterprise businesses operating within residential areas such as Spaza shops, Containers, Hair Salons, Panel Beaters, Mechanics and Carwash among other micro businesses for catering for the day to day needs of the community. Most of the above mentioned businesses are illegal in the sense that formal town planning processes were not complied with in relation to special land uses.

Given the functions above, it is clear that a Tuck/Spaza shop must not be confused with retail /business facilities on stands located along activity streets or nodes and serving a wider community at a larger scale. In addition, an Erf on which a Tuck/Spaza shop is operated should retain its primary use as residential.

#### **5. DEFINITIONS**

In this By-Law, unless the context otherwise indicates:

**Business:** means the selling, leasing, hiring out, repairing, servicing or rendering of, or other dealing in, goods or services, or the provision of any facilities, as a commercial activity of a continuing nature, and includes acting as a commercial agent or a commission agent;

**Carwash:** a business where you pay to have someone wash your car or to use car washing equipment

**Container:** means a ship container or other container provided by a phone or cell phone company used for the purpose of selling goods and / or providing a service within a community;

**Council:** means the Fetakgomo Tubatse Local Municipality, established in terms of section 12 of the Local Government Municipal Structures Act, no.117 of 1998 and any member of staff to whom the Council has delegated the powers, functions and duties vesting in the Council in relation to this By-Law,

**Informal Business:** means a business not registered with DTI and not operating within a property zoned for that specific type of business;

**Land Use Management By-law:** means as set of laws approved by council of Fetakgomo Tubatse Local Municipality to regulate and manage land uses;

**Residential unit:** A building designed for use, or used for human habitation;

**Spaza shop:** Any type of retail income-generating business, conducted from a residential stand, where the primary function of the stand remains residential, and the purpose of which is to supplement household income, and further subject to the limitation that not more than 20% of the floor area of the dwelling may be used for this purposes with the special consent of the local authority;

**Special Land Use:** Means other land use within a residential other than residential uses granted to the specific stand/ plot by the Fetakgomo Tubatse;

**Town Planning Processes:** means processes as outlined in the Fetakgomo Tubatse Local Municipality Spatial Planning and Land Use Management By-Law;

## 6. FETAKGOMO TUBATSE PROCLAMIED TOWNSHIPS

TOWNSHIP NAMES	TOWNSHIP NAMES
TUBATSE A	BURGERSFORT EXT 41
BURGERSFORT EXT 11	BURGERSFORT EXT 5
BURGERSFORT EXT 4	BURGERSFORT EXT 52
BURGERSFORT EXT 18	FETAKGOMO EXT 1
BURGERSFORT EXT 19	GA-MAPODILA-A
BURGERSFORT EXT 9	MECKLENBURG-A
BURGERSFORT EXT 16	MECKLENBURG-B
BURGERSFORT EXT 17	OHRISTAD EXT 1
BURGERSFORT EXT 20	STEELPOORT EXT 9
BURGERSFORT EXT 21	STEELPOORT EXT 1
BURGERSFORT EXT 25	STEELPOORT EXT 2
BURGERSFORT EXT 34	STEELPOORT EXT 7

BURGERSFORT EXT 57	STEELPOORT EXT 10
BURGERSFORT EXT 23	STEELPOORT EXT 14
BURGERSFORT EXT 35	STEELPOORT EXT 3
BURGERSFORT EXT 40	STEELPOORT EXT 4

## 7. TOWN PLANNING PROCESSES (APPLICATION PROCEDURE)

The following procedures should be followed by the applicant when submitting an application:-

- a) A Tuck/Spaza Shop, Car Wash, Container, hair salons, panel beaters, mechanics and other small micro businesses within proclaimed townships shall only be operated with the special consent of the Municipality, provided that the Municipality: may waive compliance with the formal special consent procedure if the written consent of the registered owner of each – adjoining property and such other properties as the head of the department may direct, is first obtained and submitted to the Municipality.
- b) Any person who wishes to operate a spaza shop, carwash, container, hair salons, panel Beaters, Mechanics and other small micro businesses in rural areas and/or areas under traditional authority, shall apply to the local authority through a written consent.
- c) The applicant shall obtain written comments and/or petitions from the surrounding neighbors, where the municipality will determine the affected neighbors.
- d) A small scale site plan (A3) shall be submitted with the application.
- e) A motivating memorandum stipulating the intentions of the applicant together with a locality plan shall form part of the application.
- f) The Title Deed of the property must form part of the application.
  - (i) The title deed indicates the registered owner of a specific property. If the applicant is not the registered owner of the property, as indicated in the title deed or lease agreement, the written permission of the registered owner must be obtained, in the form of a power of attorney. A company resolution is also required, if the property is registered in the name of a company.
  - (ii) In the case where a bond is registered against a specific property, an endorsement to that effect will appear in the title deed. If this is the case, the bondholder's consent must be obtained and forwarded, with the application.
  - (iii) The amendment or removal of restrictions in the Conditions of Title is necessary, where a land-use constraint is found, for example, which restricts the land-use of the property to residential or commercial only. Where a condition in the title deed is found to be restrictive, it is necessary that an

application be made to either amend or remove the condition, before any development can take place, assuming such development conforms to all other requirements.

- g) All objections lodged or representations made shall be dealt with at the Municipality
- h) Advertisement of the intentions of the applicant must be placed on site for 14 working days.
- i) Where a building or an attachment is to be erected, building plans should be attached to the application.
- j) In areas under tradition, the application must be accompanied by the recommendation letter from the Tribal Authority regarding the intended use. If the application is not supported reasons thereof must be stated. Tribal Authority may recommend conditions to the municipality in relation to the application if recommended for approval.
- k) The applicant may only commence with the operations of the business only after getting both approval from the municipality and certification of operation from LEDET.
- l) The Council Approval and certificate of operation by LEDET must both be presented during any inspection by the official of the Municipality, a Ward Cllr, member of Tribal Council, the SAPS and LEDET officials.

## **8. CRITERIA AND STANDARD CONDITIONS OF APPROVAL, PAYMENTS AND PENALTIES PER WARDS**

The following conditions must be laid down with the approval of applications for spaza shops, hair salons, panel beaters, mechanics, containers, and other micro businesses on residential stands, where applicable:

### **Ward 18, 02, 03, 30, 13, 35, 36 (Bugersfort/Steelpoort towns):**

- a. A Tuck/Spaza Shop must be operated from a building or associated immovable measuring 20m<sup>2</sup> structure approved in terms of the National Building Regulations and Building Standards Act 103 of 1977. i.e operate from an approved structure that complies with all Council by-laws and relevant policies Building regulations.
- b. A building plan for the Tuck/Spaza Shop must be submitted to the building control unit for Municipal approval with a contractual agreement signed between the owner of the property and the applicant.
- c. The floor area of a spaza shop will be restricted to a maximum of 20m<sup>2</sup>
- d. The floor area of a tavern will be restricted to a maximum of 50m<sup>2</sup>
- e. The floor area of a Car wash will be restricted to a maximum of 40m<sup>2</sup>
- f. A Tuck/ Spaza Shop and other small micro businesses will not be permitted in close proximity of 3500 meters away from one another.
- g. Only one container measuring 20m<sup>2</sup> per stand will be permitted.

- h. Trading hours for spaza shops, containers and other micro businesses will be permitted only from 6:00am to 20:30pm each day.
- i. Trading hours for hair salons, panel beaters, and mechanics will be as per approval by the municipality. However no noise shall be permitted in Hair Salons, Panel Beaters, Mechanics after 22H00 pm every day.
- j. No Street parking or parking on the pavement shall be allowed.
- k. Only one container providing similar service shall be permitted within 250 stands that is per population of approximately 1500 people.
- l. Containers must not be placed within 3 meters from the kerb.
- m. In town centers where Municipal special consent is not required, a business license (either liquor or trading) must be obtained.

### **Fetakgomo Tubatse Proclaimed Townships**

- a. A Tuck/Spaza Shop must be operated from a building or associated immovable measuring 20m<sup>2</sup> structure approved in terms of the National Building Regulations and Building Standards Act 103 of 1977. i.e operate from an approved structure that complies with all Council by-laws and relevant policies Building regulations..
- b. A building plan for the Tuck/Spaza Shop must be submitted to the building control unit for Municipal approval with a contractual agreement signed between the owner of the property and the applicant.
- c. The floor area of a spaza shop, and other businesses on a residential stand will be restricted to a maximum of 20m<sup>2</sup>
- d. The floor area of a tavern will be restricted to 50m<sup>2</sup>
- e. A Tuck/ Spaza Shop will not be permitted by the Municipality in close proximity of 300 meters to each other.
- f. Only one small micro business per stand will be permitted.
- g. Trading hours for spaza shops, containers and other micro businesses will be permitted only from 6:00am to 20:30pm each day
- h. The business operation hours for hair salons, panel beaters, mechanics shall be as per municipal by-laws regulations stipulations.
- i. No Street parking or parking on the pavement shall be allowed.
- j. Only one container providing similar service shall be permitted within 200 stands that is per population of 1200 people.
- k. Containers must not be placed within three meter from the kerb.

### **All Villages within the Jurisdiction of Fetakgomo Tubatse Local Municipality:**

- a. A Tuck/Spaza Shop must be operated from a building or associated immovable measuring 30m<sup>2</sup> structure approved in terms of the National Building Regulations and Building Standards Act 103 of 1977. i.e operate from an approved structure that complies with all Council by-laws and relevant policies pertaining to building regulations.



- b. A building plan for the Tuck/Spaza Shop must be submitted to the building control unit for Municipal approval with a contractual agreement signed between the owner of the property and the applicant.
- c. The floor area of a spaza shop on a residential stand will be restricted to a maximum of 30m<sup>2</sup>
- d. A Tuck/ Spaza Shop will not be permitted by the Local Municipality's jurisdiction in close proximity 200 meters to each other.
- e. Only one container per stand will be permitted.
- f. Trading hours for spaza shops, containers and other micro businesses will be permitted only from 6:00am to 20:30pm each day
- g. Trading hours for hair salons, panel beaters, and mechanics will be as per approval by the municipal by-laws regulations stipulations.
- h. No Street parking or parking on the pavement shall be allowed.
- i. A tavern shall be considered/approved in terms of the submitted Site Development Plan
- j. Only one spaza shop shall be permitted within 50 stands which is population of 300 people those that already in operation are exempted.
- k. Only one container providing similar service shall be permitted within 40stands that is per population of 240 people.
- l. Containers must not be placed within three meter from the kerb.

## **9. GENERAL STANDARD CONDITIONS**

The following conditions shall apply to the application of spaza shops, hair salons, panel beaters, mechanics , containers and other micro businesses on residential stands within the Jurisdiction of Fetakgomo Tubatse Local Municipality;

- a. A person who wishes to conduct business shall on the prescribed form apply to the Municipality.
- b. Where a business is carried on at more than one premises, a separate permit is required for each premise.
- c. Permits may only be renewed to applicants who have a good record of compliance.
- d. Foreign nationals in possession of South African Identity document/or granted business visas can operate and own businesses anywhere in the country except participating in voting processes or elections.
- e. The activity shall not interfere with or negatively influence the amenities of the surrounding area.
- f. All vehicular and pedestrian access shall be to the satisfaction of the Municipality.
- g. The Municipality may impose any other condition/s that it deems necessary to protect the amenities of the area or neighborhood.
- h. No alcoholic drinks/ beverages shall be sold from Tuck/Spaza Shops.
- i. No tobacco products shall be sold to persons under the age of 18.
- j. A trading license must be obtained from the relevant section from the Municipality.

- k. A tuck/spaza shop shall be used for purposes of basic groceries excluding hardware, electrical appliances and meat products.
- l. A notice or sign displayed on the property to indicate and advertise the business being conducted from the dwelling, shall be in accordance with the regulations of the Fetakgomo Tubatse Local Municipality Advertising By-Law.
- m. The approved license will only operate on an approved stand for such purpose.
- n. One parking space must be provided on the application property
- o. Permits will be revoked if liquor or any drugs are sold on the property.
- p. Re-application for declined application may only be resubmitted after six months from date of the disapproval by Council.
- q. Hair Salons, panel beaters, mechanics must provide additional ablution block separated from the hair salons, panel beaters, mechanics etc... for both sexes as follows:
  - ✚ Male: One urinal , one water closet per 15 people and one hand washing basin
  - ✚ Female: one water closet per 15 people and one hand washing basin
- r. Adequate security must be provided at all times at hair salons, panel beaters, mechanics, these include physical security, alarms and walls.
- s. Consent use will lapse on the time frame specified within the approval.
- t. The applicant must submit a letter to the municipality if they need an extension to operate, 3 months prior to the expiry date.
- u. The license or permit will be revoked in case false information has been provided to the municipality or illegal activities are carried on in the concerned property.
- v. The building line of the street boundary and other boundaries must be taken into consideration and ensure that the business does not disturb traffic view and flow.
- w. Capacity of the Law enforcement agencies (SAPS and traffic officers) be taken into consideration. The municipality must engage the SAPS to determine available capacity in relation to monitoring issues and law enforcement.
- x. All extensions (permanent and temporary) of existing structure must be approved by the municipality prior to commencement of the construction.
- y. The property be surrounded by a built wall in terms of the National Building Regulations for security purposes and an abatement measure for noise.
- z. Litter accumulated by the businesses shall be handled in such manner that is not detrimental to the neighboring properties
- aa. Sufficient ablution facilities to be provided in site for the customers, for reliving themselves and not on other people's properties.
- bb. All Health by-laws/ policies shall be adhered to and complied with, including all covid-19 regulations
- cc. Other micro businesses will be evaluated on individual merit

## **10. SCOPE OF OPERATION OF THE SMALL MICRO BUSINESSES**

- a. The property must remain residential in appearance and character, and must at all times comply with the definition of “Dwelling House”.
- b. Entertainment facilities shall not be permitted within a Tuck-Shop.
- c. A Tuck-Shop shall not involve the sale of alcohol or any other goods which in the opinion of the municipality are unnecessary for the day to day needs.
- d. No external advertising shall be permitted on the site, unless a consent is obtained from the Municipality in terms of the Fetakgomo Tubatse Local Municipality Advertising By-law, 2017.
- e. A Tuck/ Spaza Shop and other small micro businesses must be operated in accordance with all relevant By-Laws and other Legislation of the Municipality
- f. A Tuck-shop shall not be allowed to cause any high level of noise, which will disturb peace within the neighborhood.
- g. The storage of goods and equipment shall be within the Area designated for that purpose on the plan which is to accompany the application detailing that Area to be used for the business as well as any portion of that area in which goods or equipment will be stored.
- h. Only one light delivery vehicle at a time may be used for the delivery to dispatch goods or supplies.
- i. In assessing any application, consideration shall be given to ensure that the location of the Tuck Shop/Spaza Shop and any other micro business does not compromise the principles of sound land use management practice.
- j. If the use is discontinued for the period of greater than 90 days, the dwelling house in so far as it may have been altered for that purpose, must be restored to its original state to the satisfaction of the Municipality. In case where the Spaza shop was detached from the dwelling house it must be demolished within that specified period.
- k. No Tuck shop shall be erected or approved a 1000m less from a formally rezoned business stand as the tuck shops are established to help community members to access their basic needs close by, in a case where there is a formal business on a business stand there is no need for a Tuck shop near that stand for the above mentioned distance.
- l. Flammable and hazardous substances will not be allowed in the Tuck-shop and continuous contravention will lead to permanent closure.
- m. A person is allowed to own only one Tuck –Shop registered in his/her name within a township and two within the municipality.

## **11. PAYMENTS**

The person shall pay application fee and annual fee stipulated on the approved tariffs by council to run a Tuck shop/Spaza, Hair Salons, Panel Beaters, Mechanics, Carwash and other small micro businesses.

## **12. PENALTIES**

Any person who establishes a Spaza shops, Containers, Hair Salons, Panel Beaters, Mechanics , Carwash and other micro businesses without Municipal approval shall be liable to a fine or penalty fee as per the approved tariffs

- a. The owners of Spaza shops, Containers, Hair Salons, Panel Beaters, Mechanics , Carwash and other micro businesses who fail to renew their permits on time will be fined and their business will be closed down until they pay the fine and apply for renewal of their permits
- b. Those who will be found sleeping inside the Tuck/Spaza Shops, Containers, Hair Salons, Panel Beaters, Mechanics, Carwash and other micro businesses will be fined as per the approved tariffs.

## **13. PROHIBITIONS/ PROHIBITED CONDUCT**

No person shall establish a business of a Spaza shops, Containers, Hair Salons, Panel Beaters, Mechanics and Carwash and other micro businesses:

- a. If she/he is declared by a court of law to be unsound mind.
- b. A non –South African citizen who is in the country illegally.
- c. Without the approval of the municipality
- d. No person carrying on business shall sleep in the Tuck-shop.
- e. At a place or in an area registered or reserved for municipal purposes,
- f. In a garden or a park to which the public has a right of access
- g. No illegal building or structure shall be erected for purposes of a Spaza/Tuck-shop.

## **14. ESTABLISHMENT OF A COMMITTEE**

The Municipality will establish one Technical Committee to deal with all the applications received which will consist of the following:

- a. Building Control,
- b. Town Planning Services,
- c. Local Economic Development,
- d. Registration and Licensing
- e. Community Services
- f. Infrastructure Services

All the applications will be circulated to the above-mentioned departments within the Municipality for comments before the consent is granted.

## **15. SHORT TITLE AND COMMENCEMENT**

This by-law is called Fetakgomo Tubatse Local Municipality Street Trading By-law and shall come into operation on the date of publication in the provincial gazette.

# Fetakgomo Tubatse Local Municipality



## Special/ written consent for small micro medium enterprises businesses application form

Name/ Company:			
Identity Number of the applicant/ Company Registration Number:			
Residential/ Physical Address:			
Are you the registered owner of the property:	Yes	<input type="checkbox"/>	If no who is the registered owner of the property:
	No	<input type="checkbox"/>	
Postal Address:			
Contact details:	Cell	Telephone	E-mail
Erf/ Holding/Portion No:			
Township/ Agricultural holdings/Farm:			
Current Zoning of the property:			
Type of Small micro business to be practiced:			

I..... as the registered owner/authorized agent of the above-mentioned property, hereby formally apply to the Fetakgomo Tubatse Local Municipality to operate afore-mentioned business, in terms of the provisions of Fetakgomo Tubatse Local Municipality Spatial Planning and Land Use Management By-Law, 2017; Bugersfort/Steelpoort towns Planning Scheme, 2001; Fetakgomo Tubatse Local Municipality SMME'S (Small, Medium and Micro Business Enterprises), 2017 and other relevant legislation/policies

I desire that the above-mentioned business be operated from a portion of the subject property and the aforesaid be used for no other purposes, whatsoever, except the main use of the property which shall remain residential.

I undertake that, in the event of the Fetakgomo Tubatse Local Municipality approving my application, the above-mentioned business/activity/building will be operated/constructed in such a manner, no nuisance will be caused as possible to the surrounding residents.

I understand that, in the event of the premises being used for any other purposes than the above-mentioned or other than provided for in the zoning, as stipulated in the relevant town-planning scheme/applicable legislation, the Fetakgomo Tubatse Local Municipality will be entitled to take immediate action, in order to interdict the carrying on of such illegal business/activity/building and to close it down or to carry out any other proceedings, the aforesaid may deem advisable, without any compensation being payable by the Fetakgomo Tubatse Local Municipality.

In order to ensure that the above provisions will be carried out, I agree that the Fetakgomo Tubatse Local Municipality, shall have the right at all reasonable times, to enter upon the aforesaid property and/or any buildings or structures erected thereon, for the purpose of inspecting the aforesaid property, buildings and structures and the nature of the business and/or other activity therein.

Yours faithfully

.....

Applicant's Signature  
If not the registered owner

.....

Date

.....

Registered Owner's Signature

.....

Date