

Harare (Licensed Premises) (Amendment) By-laws, 2017 (No. 3)

IT is hereby notified that the Minister of Local Government, Public Works and National Housing has, in terms of section 229 of the Urban Councils Act [*Chapter 29:15*], approved the following by-laws made by the Harare City Council:—

1. These by-laws may be cited as the Harare (Licensed Premises) (Amendment) By-laws, 2017 (No. 3).

2. Section 3 (Interpretation) of the Harare Licensed Premises By-laws, 1975, published in Rhodesia Government Notice 810 of 1975 (hereinafter called the principal by-laws), is amended—

(a)—

(i) by the repeal of the definition of “medical officer of health” and substitution of—

““Director of Health Services” means a person employed by Council to hold office as the Head of Department for Health Services and includes a person authorised to act in that capacity;”;

(ii) by the repeal of the definition of “health inspector” and substitution of—

““Environmental Health Officer” means an employee employed by Council to inspect premises where businesses are operated and where services are provided listed in these by-laws and registered with the Medical Professions Council;”;

(iii) by the repeal of the definition “premises” and substitution of—

““premises” means a building or part of a building or any forecourt yard used in connection with any building or part of any building or a mobile ice cream or food takeaway;”;

(b) by the insertion of the following definitions—

““authorised official” means any person employed or delegated by council to carry out functions prescribed in these by-laws;

“public place” means any bridge, enclosure, footpath, garden, service lane, park, garage, car park, open space, pavement, road, side walk, square, subway, street, mall or undeveloped land or any other area vested in or controlled by the council, to which the public has access;

“secure compound” means any area designated by Council for the purpose of safekeeping of the seized goods removed under these by-laws;”.

3. The principal by-laws are amended by the deletion of “medical officer of health” wherever it appears and substitution of “Director of Health Services or authorised official”.

4. Part I (Premises to be licensed) of the principal by-laws is repealed and substitution of—

“PART I

Premises to be licensed

4. (1) No person shall carry on any business specified in these by-laws, or use any premises for any purpose—

(a) unless he or she is the holder of a relevant licence; and

(b) except on the premises specified in such licence.

(2) An application for a licence shall be submitted to the Director of Health Services in form specified in the First Schedule.

Issue of licence

5. (1) A licence may be issued for any period not exceeding one year, and shall, notwithstanding the date of issue, expire on the 31st December of the year of issue.

(2) A licence shall be issued—

(a) if the Director of Health Services is satisfied that the premises conform to the requirements of these by-

laws applicable to the business which the applicant proposes to carry on; and

(b) upon payment of the appropriate fee.

(3) A licence shall be refused by the Director of Health Services if he or she considers that the premises do not comply with the part of these by-laws applicable to the business in respect of which application is made.

(4) A licence shall subject to the provisions of these by-laws and any other applicable law authorise the licensee to—

(a) carry on business or provide service specified in the licence at the premises and for the period specified therein; and

(b) use the premises specified in the licence for period specified therein as the case may be.

(5) The Council may—

(a) refuse to issue a licence to an applicant who has been convicted of an offence under these by-laws; or

(b) cancel, in writing, any licence if the holder thereof, or any servant or employee of his or her, is convicted of an one offence, under these by-laws.

(6) A licence cancelled in terms subsection (5)(b) of shall be surrendered to the Director of Health Services within forty-eight hours of written notice being given to the holder thereof.

(7) A licence shall not be transferred—

(a) from the premises in respect of which it was issued to any other premises; or

(b) from the person to whom it was issued to any other person.

(8) The fee payable for a licence/certificate shall be as fixed by Council from time to time:

Provided that the fee payable for any licence, other than a duplicate licence, issued in respect of any period commencing after 30th June in any year shall be reduced by fifty per cent.

(9) A licence shall be issued in form specified in the First Schedule.

(10) The current licence shall be fixed and maintained in a conspicuous place on all licensed premises.”.

5. The principal by-laws is amended by the insertion after Part X of the following parts—

“PART XI

Requirements for mobile ice cream or food take away

15. (1) In this part—

“ice-cream mobile take-away” means a wheeled vehicle, where ice-cream is dispensed through an ice-cream dispensing machine for sale but shall not include ice-cream which has already been prepared at a place of manufacture, packed and sealed in wrappers or containers and sold without any further preparations;

“mobile food take away” means a wheeled vehicle where food is prepared, cooked and sold therefore for human consumption;

“mobile ice cream/food take away operator” means any person who operates a licensed mobile ice cream/food take-away business in terms of these by-laws.

(2) No person shall install a mobile food take-away, or permit a mobile food take-away to be installed, or to remain installed, on any premises unless the operator is in possession of a valid licence.

(3) All mobile food take away or ice cream mobile take away shall comply with the following—

- (a) the minimum size shall be two comma one metres long by one comma five metres wide; and
- (b) the distance from the floor and the serving counter surface shall be at least one metre; and
- (c) the roof shall be made of non corrodible metal or other approved materials; and

- (d) all shelves and counter tops shall be of stainless steel metal, formica or any other approved impervious material; and
 - (e) a wash hand basin with a constant piped supply of hot and cold water connected thereto must be provided; and
 - (f) an approved holding tank to waste water forming an integral part of the mobile food take-away provided; and
 - (g) only gas or electric appliances shall be provided for preparing food; and
 - (h) approved refrigeration facilities shall be provided, and
 - (i) floors are to be hard of impervious material with smooth finish; and
 - (j) walls are to be of impervious material with smooth finish; and
 - (k) all panel junctions to be covered; and
 - (l) approved holding tank for potable water supply shall be provided; and
 - (m) stainless steel wash up sinks connected to a supply shall be provided; and
 - (n) appropriate firefighting equipment to be provided in accordance with the Harare Fire By-laws, 1968.
- (4) Every licence of a mobile food take away shall—
- (a) provide approved serving utensils for use in such a mobile take away; and
 - (b) take precautions to ensure that food is stored at a temperature not exceeding 7⁰C; and
 - (c) obtain food and food ingredients from licensed premises only; and
 - (d) ensure that food handlers practice good food and personal hygiene; and
 - (e) ensure that all food handlers are medically certified annually, and such certification to include a rectal swab and chest X-ray; and

(f) not use any pie warmers on the mobile food take away.

(5) The provisions of subsection 4(c), (d) and (e) above shall apply, *mutatis mutandis*, to a licensee of mobile ice cream take away.

(6) Only the following foodstuffs may be prepared and sold in the mobile food take-away—

- (a) sadza;
- (b) vice;
- (c) hot dogs;
- (d) chips;
- (e) hamburgers;
- (f) borewores;
- (g) stews;
- (h) grilled, fried meat;
- (i) sausages;
- (j) french fries;
- (k) any other approved wholesome food approved by the Director of Health Services upon application.

(7) Mobile ice cream or food take-away shall be permitted on sites designated by Council from time to time:

Provided that Council may limit the number of mobile ice cream or food take-away permitted to carry on business on any particular part of the Council area.

(8) The mobile ice cream or food take-away shall be towed away at the end of each working day.

(9) In the event of the owner failing to move the mobile ice cream or food take-away overnight, Council may do so and the provisions of the Harare (Clamping and Tow-away) By-laws, 2005, published in Statutory Instrument 104 of 2005, shall apply, *mutatis mutandis*, to these by-laws.

(10) No mobile take aways to be sited in the Central Business Districts or within 100 metres from licensed premises.

PART XII

Seizure, disposal and designation of goods

16. (1) An Environmental Health Officer or any authorised official may if he or she has reason to believe that a violation of Part II, III, IV, V, VI, VII, VIII, IX, X or XI of these by-laws has been committed, seize or cause to be seized any goods so connected to the offence and remove or cause to be removed such seized goods to a secure compound and such goods shall be recorded in a records book and kept safely:

Provided that perishable goods shall be disposed of or destroyed after obtaining written authority from the Director of Health Services.

(2) Any seized goods removed to a secure compound shall be released to the owner after payment of—

- (a) the prescribed penalty; and
- (b) storage charges set by resolution of Council from time to time.

(3) Council shall publish in any newspaper of wide circulation within the Council area a list of unclaimed goods and advise the owners to claim the goods within thirty days.

(4) Council shall sell by public auction any goods that remain unclaimed thirty days after the notice has been published.

(5) Council shall deduct the charges specified in the Fifth Schedule from the proceeds of the sale of unclaimed goods and the balance (if any) shall be paid to the owner within thirty days from the date on which the owner submits to Council a written request for such payment.

(6) Council shall operate a special account into which money realised from the sale of unclaimed goods shall be deposited.

(7) Any money not claimed within thirty days after the sale of unclaimed goods shall be forfeited to Council.

(8) Council shall publish in any newspaper circulating within the Council controlled area—

- (a) any place designated as a secure compound; and

- (b) the names of any persons appointed as authorised persons.

(9) Payment of the prescribed penalty and storage charges shall be made to the Council's City Treasurer or to an authorised person.

PART XIII

Offences and penalties

17. (1) Any person who—
- (a) contravenes or fails to comply with any provision of these by-laws; or
 - (b) contravenes or fails to comply with any requirement set out in a notice issued and served to him or her in terms of these by-laws; or
 - (c) contravenes or fails to comply with any condition imposed in terms of these by-laws; or
 - (d) knowingly makes a false statement in respect of any application in terms of these by-laws; or
 - (e) obstructs, hinders or interferes with a health inspector or authorised official or other official of the Council acting under power delegated to him or her, in the exercise of any power or the performance of any duty under these by-laws; or
 - (f) fails or refuses to furnish to an environmental health officer or authorised official or other official of the Council acting under power delegated to him or her, with any documentation or information required for the purposes of these by-laws or furnishes a false or misleading document or false or misleading information; or
 - (g) fails or refuses to comply with any instruction given in terms of or for the purposes of these by-laws; or
 - (h) pretends to be an environmental health officer or authorised official or other official of the Council acting under power delegated to him or her; or

- (i) forges any licence; or
- (j) with intent to deceive, alters or erases any part of a licence or any entry lawfully made thereon; or
- (k) intentionally produces or uses any forged licence which has been unlawfully altered or from which erasures have been unlawfully made; or
- (l) makes any unlawful entry on a licence; or
- (m) who, except as may be authorised in terms of these by-laws, hires, lends, code transfers, or in any way whatsoever hands over a licence to any other person; or
- (n) with intent to deceive, makes use for any purpose whatsoever of any licence issued in terms of these by-laws, or for any purpose of these by-laws which is not his or her own;

shall be guilty of an offence and liable to a fine not exceeding level five or six months imprisonment or to both such fine and imprisonment.

(2) A person who causes or incites another person to commit an offence referred to in subsection (1), or who being in a position of authority over another person permits or allows him or her to commit an offence, shall himself or herself be guilty of that offence and liable to a fine not exceeding level five or more than six months imprisonment or to both such fine and imprisonment.

(3) Director of Health Services shall cancel a licence if the holder is penalised of any contravention of the provisions of these by-laws.

(4) Any licence cancelled in terms of subsection (3) shall not be renewed until a period of one year has lapsed from the date of cancellation.

(5) Where the licence is cancelled in terms of subsection (4) the holder shall return the licence to the Director of Health Services within forty-eight hours of being given notice of such cancellation.

(6) Any person who fails to comply with the notice stated in subsection (5) above shall be guilty of an offence and liable to

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a fine not exceeding level 5 (five) or six months imprisonment or to both such fine and imprisonment.”.

6. The Second Schedule to the principal by-laws is amended by the insertion after “equine animals” of “mobile ice cream or food take-away”.