

GHANZI DISTRICT COUNCIL (MARKETS) BYE-LAWS

(section 33)

(8th February, 2008)

ARRANGEMENT OF BYE-LAWS

BYE-LAW

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S.I. 20, 1997,
S.I. 70, 2007,
S.I. 4, 2008.

1. Citation

These Bye-Laws may be cited as the Ghanzi District Council (Markets) Bye-Laws.

2. Interpretation

In these Bye-Laws, unless the context otherwise requires—

"Council" means the Ghanzi District Council;

"health inspector" means a health inspector employed by the Government or by the Council;

"market" means a market established under bye-law 3;

"Council Officer" means the Council Secretary or any Council employee authorised by the Council Secretary in writing for the purpose of these Bye-Laws;

"Licensing Officer" means the Council Secretary or any Council employee authorised

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by the Council Secretary in writing for the purpose of these Bye-Laws;

"**stall**" includes a building, stand, shelter and table used for the provision of a service to the public; and

"**stall holder**" means a person hiring a stall under these Bye-Laws.

3. Establishment and control of market

(1) The Council may establish a market.

(2) The Council shall control and supervise any market established under sub-by-law (1).

(3) No person may erect a building, tent, booth, shelter or other structure within a market without the written permission of the Council.

4. Application to hire stall

(1) A person who wishes to hire a stall shall apply to the Licensing Officer in Form 1 set out in the First Schedule.

(2) The Licensing Officer shall reject an application made to him or her under sub-by-law (1) where—

- (a) every stall of the type for which the application is made is already hired;
- (b) the applicant is under 16 years of age; or
- (c) in the opinion of the Licensing Officer, to grant the application would not be in the public interest.

(3) A Licensing Officer shall, where he or she rejects an application under this bye-law, notify the applicant in writing, stating the reasons for the rejection.

(4) A Memorandum of Agreement of Lease, as set out in Form 3 in the First Schedule, shall be signed by the Ghanzi District Council as the "Lessor" and the permit holder as the "Lessee".

5. Issue of permit

Where an application under bye-law 4 is approved, the Licensing Officer shall issue a permit in Form 2 set out in the First Schedule.

6. Hire fees and rent

Monthly payments for rent or hire of a stall shall be made in advance at the Ghanzi District Council Revenue Office.

7. Hours and days of operation

The hours and days of operation of a stall shall be as set out in the Second Schedule.

8. Subletting of stall

(1) A stall holder shall not sublet a stall.

(2) A stall holder who contravenes sub-bye-law (1) commits an offence.

(3) A stall holder who contravenes the provisions of sub-bye-law (1) shall forfeit, to the Council, the monthly payment for rent or hire of a stall.

9. Revocation of permit

(1) The Council shall revoke a permit of a stall holder where the stall holder–

(a) does not pay fees in accordance with bye-law 7; or

(b) contravenes bye-laws 8, 11, or 14.

(2) The Council shall, where it revokes a permit under sub-bye-law (1), cancel the permit and Memorandum of Agreement of Lease.

10. Cleanliness of stall

(1) A permit holder shall take all reasonable steps to ensure that his or her stall and all utensils, machinery and equipment used therein and all goods sold or displayed for sale therein are at all times in a clean and hygienic condition, and that he or she and every other person engaged in business at the stall are at all times while so engaged, in a proper state of cleanliness.

(2) Any stall holder who contravenes sub-bye-law (1) commits an offence and–

(a) is liable to have his or her licence revoked by the Council.

(b) shall forfeit, to the Council, the monthly payment for rent or hire of a stall.

(3) A person–

(a) whose permit and Memorandum of Agreement of Lease have been cancelled; or

(b) who has forfeited monthly payments for rent or hire of a stall to the Council under sub-bye-law (2),

may appeal to the Minister, in writing, against the cancellation or forfeiture, or both, within 14 days after being so informed.

11. Order in market

(1) No person may beg, gamble, loiter, scream, shout, sing in a loud or unseemly manner, make any loud noise or create any disturbance or conduct himself in an offensive or objectionable manner within a market.

(2) A Council Officer may require a person who misbehaves in his or her presence or whom he or she has reasonable grounds to believe has recently so misbehaved in terms of sub-bye-law (1), to leave the market.

(3) A Council Officer may refuse entry into a market to any person who misbehaves in terms of sub-bye-law (1).

(4) A person who on being required forthwith to leave a market under sub-bye-law (1)

refuses to do so or who having left a market on being required to do so under that sub bye-law or having been refused entry to a market, under sub-bye-law (2) enters a market or attempts to enter the market without the permission of the Council Officer shall be guilty of an offence and shall be liable to punishment under bye-law 12.

12. Animals not allowed in market

(1) No person may cause or permit any animal to enter or remain within a market.

(2) Notwithstanding the provisions of sub-bye-law (1), a stall holder may cause or permit the entry into a market of poultry intended for sale or slaughter within the market.

13. Inspection in market

(1) A Council Officer or health inspector may require a stall holder to remove from a market, produce which in the opinion of the Council Officer or health inspector is unfit for human consumption.

(2) A stall holder who contravenes sub-bye-law (1) commits an offence.

14. Condition of stall at end of hire

(1) At the expiration, or on the cancellation of a permit issued under bye-law 5, and within 21 days before handing over the stall keys to the Council, the permit holder shall—

- (a) leave the stall in a clean, tidy and sanitary condition;
- (b) remove from the stall all property which does not belong to the Council;
- (c) replace to its original position, all furniture and other fittings in the stall belonging to the Council;
- (d) remove any item displayed by him or her other than the Council during the period the permit was in force;
- (e) repair damage to the stall, its fixtures, furniture, fittings and fences caused during the period the permit was in force and arising out of the hire of the stall, except for fair wear and tear.

15. Appeal

A person aggrieved by a decision of the Council to—

- (a) refuse to hire him or her a stall; or
- (b) suspend or revoke his or her permit may,

after giving notice of his or her intention to appeal in writing to the Council, and within 30 days of the date on which notice is given to him or her by the Council of the rejection, suspension or revocation, appeal to the Minister.

16. Penalties

A person who contravenes a provision of these Bye-Laws commits an offence and is liable, for a first offence, to a fine not exceeding P100, or, in default thereof to imprisonment for a term not exceeding 14 days, and for a subsequent offence, to a fine not exceeding

P200 or, in default thereof, to imprisonment for a term not exceeding two months.

FIRST SCHEDULE

**Form 1
APPLICATION FOR PERMIT TO HIRE STALL**

(bye-law 4 (1))

GHANZI DISTRICT COUNCIL (MARKETS) BYE-LAWS

Full name and address of applicant

Residential address.....

Nationality National Identity Card number.....

Stall location/number
.....

Period for which the stall is hired.....

Goods to be sold or service(s) to be provided.....

Do you have any other market stall ?. yes/no (*tick whichever is applicable to you*)

If yes, give particulars of its location
.....

Date Signature of applicant
.....

**Form 2
PERMIT TO HIRE STALL**

(bye-law 5)

GHANZI DISTRICT COUNCIL (MARKETS) BYE-LAWS

NOT TRANSFERRABLE

Issued to.....

Residential address and postal address

To trade in the following goods or to provide the following services

At stall number situated at Market

From..... to.....

At a monthly rental of P.....

Date Signature of Licensing Officer

Renewals

From to

From to

From to

From to

**Form 3
MEMORANDUM OF AGREEMENT OF LEASE**

(bye-law 4 (4))

GHANZI DISTRICT COUNCIL (MARKETS) BYE-LAWS

Made and entered into by and between
(Hereinafter referred to as (the LESSOR))
and
(Hereinafter referred to as (the LESSEE))

INTERPRETATION

Unless such meaning is inconsistent with the context, the following terms shall have the meaning assigned to them hereunder, namely:

- (a) The Premises:
- (b) The Lessor:
- (c) The Lessee:

1. LEASE PERIOD

The Lessor hereby lets and the Lessee hereby hires the premises on the terms and conditions set out below for a period of ONE (1) YEAR commencing on and terminating on

2. RENTAL

- 2.1. The Lessee shall pay the Lessor a rental of P per month. The Lessee shall pay one month rent in advance plus a security deposit equivalent to the rent. Deposit is returnable at the end of the contract if there are no damages caused by Lessee. Rental shall be paid on or before the first day of each month.

3. OPTION TO RENEW

The Lessor hereby grants to the Lessee an option to renew this lease for a further period of 12 months on the same terms and conditions save as to the rental which shall be re-negotiated and agreed to by the Parties provided the Lessee shall then not be in breach of any of the terms and/or conditions of this lease. The Lessee shall give notice of its intention to exercise the option herein by giving not less than three months' written notice of such intention to the Lessor.

4. USE OF PREMISES

The premises shall be used for business purposes only and shall not be used for any other purposes without the written consent of the Lessor.

- 4.1 The Lessee shall not contravene nor permit the contravention of any of the conditions of title under which the Lessor owns the premises and shall comply and secure the compliance with any laws, ordinance, proclamations or regulations which the Lessor is required to observe by reason of its ownership and shall furthermore not use nor permit the use of the premises in such a manner as to become a nuisance.
- 4.2 The Lessee indemnifies and holds the Lessor harmless against all actions, proceedings, costs, damages, losses, claims and demands, against the Lessor as a consequence of the Lessee's failure to comply with all the provisions of this clause provided, however, that in the event of such actions, proceedings, claims and demands the Lessor shall within fourteen (14) days of acquiring knowledge hereof and before taking any steps as may be necessary to prevent any of the Lessor's rights from being prejudiced, give notice in writing hereof to the Lessee and the Lessee shall then be entitled to be joined as a co-defendant or co-respondent in so far as that may be allowed in law.

5. UTILITIES AND OTHER CHARGES

The Lessee shall with effect from the commencement date pay to the local authority all deposits required in respect of services to be provided by such authority and shall pay all charges and rates for such services.

6. CESSIONS AND SUB-LETTING

The Lessee shall not sublet the premises or any of its rights hereunder without the Lessor's prior written consent which consent shall not be unreasonably withheld.

7. REPAIRS AND MAINTENANCE

- 7.1 The Lessee shall keep, maintain and repair at its sole cost the inside of the premises, including glass fronts, windows, door entrances, panes, locks, keys, fasteners and fittings of the same, plumbing and electrical fixtures including internal drain, in a good state of repair, condition and cleanliness, and shall not injure or in any way damage any of the Lessor's fixtures and fittings on the premises, nor make any alteration in the construction or outside appearance of the premises. The Lessee shall also be responsible for unblocking and repair of any drain which, because of negligence on the part of, or damage which is caused by the Lessee, are rendered blocked or completely unfunctional. On the expiration or earlier termination of this lease the Lessee shall return the premises and the appurtenance to the Lessor in good order and condition, fair wear and tear excepted.
- 7.2 If the Lessee fails to carry out any of its obligations in terms of the provisions of 7.1 within fourteen (14) days after being called upon so to do the Lessor or within any longer period as is reasonably necessary, the Lessor may carry out any such obligations at the Lessee's cost without prejudice to its rights under this lease.
- 7.3 If the Lessor on re-taking possession of the premises on the expiration or earlier

determination of this lease, finds that any obligations of the Lessee in terms of 7.1 have not been carried out by the Lessee, the Lessor shall be entitled to carry out those obligations necessary in order to place the premises in good order and condition and to recover the cost thereof from the lessee notwithstanding the expiration or earlier determination of the lease.

- 7.4 Any obligations of the Lessee in terms of 7.1 carried out on the premises by the Lessee shall be carried out to the reasonable satisfaction of the Lessor by competent and experienced workmen employed by the Lessee for such purposes who shall not use any materials which are inferior to those materials built into or on the premises at the commencement date.
- 7.5 The Lessee shall at all times keep the premises in a clean, tidy and sanitary condition.
- 7.6 The Lessee shall not fell, cut or deface any trees on the premises.
- 7.7 The Lessee shall store refuse in an approved container.

8. RIGHT OF ACCESS

- 8.1 The Lessor shall have right of entry on the premises at all reasonable times during the currency of this lease, either personally or through a caretaker, workmen, agents or other representatives, for the purposes of inspection.
- 8.2 The Lessor undertakes that it will not unduly or unreasonably interfere with the conduct of the Lessee's business during the progress of the matter above referred to and the said inspection will be carried out as expeditiously as possible. The Lessee shall not have any claims for remission of rent, compensation or damage in connection with any of the rights granted in terms of this clause.

9. EXCLUSION OF LESSOR'S LIABILITY

Neither the Lessor nor its agents or employees shall be liable for any damage or injury which may be caused to any of the assets of the Lessor in the premises, for any injury or loss of life of the Lessee's employees, invitees, agents or licensees as a result of any cause whatsoever nor shall the Lessor be responsible to the Lessee for any interruption of the supply of electric current.

10. BREACH

- 10.1 If the Lessee fails to pay the agreed rental or other amount payable by him or her in terms of this lease on due date and persists with such failure for seven (7) days after written notice from the Lessor requiring him or her to make such payment; or
- 10.2 If the Lessee commits any breach of any of the other terms and conditions of this lease and fails to remedy that breach within seven (7) days after written notice from the Lessor to the Lessee, provided that should that breach be one which is not reasonably capable of being remedied within seven (7) days then the Lessee shall be allowed such additional period as is reasonably required therefor; or
- 10.3 If the Lessee be sequestrated (whether provisionally or finally); or
- 10.4 If the Lessee fails to satisfy or rescind a default judgment against it within fourteen (14) days of receiving knowledge of judgment then in any of such events the Lessor shall be entitled to cancel this lease immediately by written notice to that effect to the Lessee without prejudice to any other claim of any nature whatever which it may have against the Lessee as a result thereof.
- 10.5 If the Lessor gives the Lessee notice to quit and the Lessee disputes the Lessor's right to

do so and remains in occupation of the premises pending the determination of that dispute, then the Lessee shall be obliged to continue to carry out his or her obligations under this lease.

- 10.6 Provided the Lessor continues to carry out its obligation under the lease, the Lessee shall continue to pay all amounts on due dates thereof and the Lessor shall be entitled to recover and/or accept these payments.
- 10.7 The acceptance by the Lessor of these payments shall be without prejudice to and shall not in any manner prejudice any of its rights under this lease.
- 10.8 Should any such dispute between the Lessor and the Lessee referred to in 10.5 be determined in favour of the Lessor then the payments made to the terms of 10.6 shall be regarded as amounts paid by the Lessee on account of the loss sustained by the Lessor as a result of the holding over by the Lessee of the premises.

11. TERMINATION

This agreement may be terminated by either party upon giving the other one month's notice in writing of the intention to do so.

12. NOTICES

The parties choose the following addresses as their domicilium citandi et executandi for all purposes pursuant to this lease at which all notices may be effectively served.

12.1 The Lessor:.....

12.2 The Lessee:.....

Provided that either party shall be entitled to change its above mentioned address to any other address in Botswana by giving the other party written notice of the change of that effect.

- 12.3 All notice in terms of this lease shall be in writing.
- 12.4 Shall either be delivered by hand or sent by prepared registered post to the address in sub-bye-law (1).
- 12.5 Be deemed to have served on the date of delivery if delivered by hand or on the fifth day after posting if sent by prepaid registered post.

13. IMPLEMENTATION

All parties undertake to do all such things, take all steps as may be necessary to give effect to this lease.

14. WAIVER

No failure, relaxation or indulgence on the part of the Lessor exercising the powers or rights conferred upon it in terms of this lease shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right under this lease operate as a waiver.

15. VARIATION

No variation of any provision of this lease shall be of any force or effect unless the same shall be confirmed in writing and signed by the parties.

16. WHOLE AGREEMENT

This lease constitutes the whole agreement between the parties and no undertaking or representation of any nature whatsoever other than as set out in this lease has been given by any of the parties.

THUS DONE AND SIGNED AT THIS DAY OF
..... 20

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES.

AS WITNESSES:

1.

.....
THE LESSOR

2.

THUS DONE AND SIGNED AT THIS DAY OF
..... 20

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES.

AS WITNESSES:

1.

.....
THE LESSEE

2.

SECOND SCHEDULE

(bye-law 7)

Business days and hours of operation

Monday to Sunday

5.30 am to 9.00 pm

NOISE AND NUISANCE (MODEL) BYE-LAWS (ADOPTION) ORDER (NORTH EAST DISTRICT COUNCIL)

(under sections 33 and 34)

(15th May, 1998)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Adoption of Bye-Laws

S.I. 33, 1998.