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**MANGAUNG METROPOLITAN MUNICIPALITY**

**INFORMAL TRADING BY-LAW**

Promulgated in Local Government Notice No. 35 of 24 June 2016

**Table of Contents**

1. **Definitions and Interpretation**
2. **Purpose of By-law**
3. **Application of By-law**
4. **Forms of Informal Trading**
5. **Applications for Informal Trading**
6. **Allocation or Lease of Sites**
7. **Trading Days and Hours**
8. **Hygiene Requirements**
9. **Prohibited and Restricted Areas**
10. **Prohibited Conduct**
11. **Restricted Conduct**
12. **Prohibited Goods**
13. **Cancellation of Informal Trading Card Permit**
14. **Removal and Impoundment**
15. **Vicarious Liability**
16. **Offences and Penalties**
17. **Informal Trading Regulations**
18. **Repeal of By-laws**
19. **Short Title and Commencement**
20. **Definitions and Interpretation**

1.1 In this By-law;

1. the singular includes the plural and vice versa;

1. words and expressions denoting the male sex includes the female sex and vice versa ;
2. reference to natural person shall include juristic person and vice versa;
3. a reference to any legislation shall be a reference to that legislation and the regulations promulgated thereunder;

(e) any words or expressions to which a meaning has been assigned in the Businesses Act, 1991 (Act No. 71 of 1991), have a corresponding meaning; and

unless the context otherwise indicates:-

**"Act"** means the Businesses Act, 1991 (Act No. 71 of 1991) and includes the regulations promulgated thereunder

**"approval"** means approval by Council and "approved" has a corresponding meaning;

**"authorised officer/official"** means-

1. an employee who has been authorised by the Municipality to administer, implement and enforce the provisions of this by-law;
2. a traffic officer appointed in terms of Section 3A of the National Road Traffic Act, 1996;
3. a member of the police service, as defined in terms of Section 1 of the South African Police Service Act, 1995 ( Act No. 68 of 1995); or
4. a peace officer contemplated in Section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

**"Council"** means the Council of Mangaung Metropolitan Municipality and includes any duly authorised political structure, political office bearer, councillor and official thereof;

**“designated area”** means an area prescribed by the Municipality as the area at which informal trading can be conducted;

**"foodstuff"** means any article or substance, except a drug as defined in the Drugs and Drug Trafficking Act, 1992(Act No 140 of 1992), ordinarily eaten or

drunk by persons or purporting to be suitable or manufactured or sold for human consumption and includes any part or ingredient of any such article or substance or any substance used or intended or destined to be used as a part or ingredient of any such article or substance or any substance used or intended or destined to be used as part or ingredient of any such article or

substance as defined in the Food Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972.

**"garden or park"** means a garden or park to which the public has a right of access;

**"goods"** means any movable property and includes a living thing;

**“informal trader”** means a person who is engaged in informal trading;

**“informal trading”** means the selling of goods and/or services by informal trader in the designated area in terms of the provisions of this By-law;

**“informal trading card permit”** means a card issued by the Municipality to informaltrader identifying him/her and the informaltrading sitefrom where he may conduct informaltrading;

**“informal trading furniture”** means any furniture installed by the Municipality or an informal trader

**“informal trading site”** means a site in a public place, determined and approved by the Council, from where informal trading may be conducted;

**"intersection"** means an intersection as defined in the regulations promulgated in terms of the Traffic Act;

**"litter"** includes any receptacle, container or other matter, which has been discarded, abandoned or left behind by an informal trader or by his or her customers;

**‘‘Municipality’’** means Mangaung Metropolitan Municipality established by the ~~Provincial Notice No. 261 of 28 March 2011~~ Provincial Notice №. 155 of 2016 as published in the Provincial Gazette, Free State Province of 22 July 2016, issued in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**"motor vehicle"** means a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996;

**"prescribed"** means determined by resolution of the Council from time to time;

**"property",** in relation to an informal trader, means any article, container, vehicle or structure used or intended to be used in connection with such business, and includes goods in which he or she trades;

**"public building"** means a building belonging to or occupied solely by a sphere of government and includes the Municipality;

**"public monument"** means any one of the public monuments and memorials as defined in the National Heritage Resources Act, 1999 (Act No. 25 of 1999) or any similar legislation;

**"public place"** means any square, park, recreation ground or open space which is vested in the Municipality or to which the public has the right to use or is shown on a general plan of a township filed in the deeds registry or a Surveyor-General's office and has been provided for the use of the public or the owners of erven in such township;

**"public road"** means, as defined in Traffic Act, any road, street or through fare or any other place commonly used by the public or any section thereof or to which the public or any section thereof has a right of access;

**“rental”** means an amount payable by an informal trader for the leased trading site in the designated area as agreed between the Municipality and the informal trader;

**"roadway"** means, as defined in the Traffic Act, the portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic, which is between the edges of the roadway;;

**"sell"** includes –

1. barter, exchange or hire out;
2. display, expose, offer or prepare for sale;

(c) store on a public road or public place with a view to sell; or

1. provide a service for reward;

and **"sale" or "selling"** has a corresponding meaning;

**"sidewalk"** means, as defined in the Traffic Act, the portion of a verge intended for the exclusive use of pedestrians;

**“shoulder”** means, as defined in the Traffic Act, the portion of the road, street or thoroughfare between the edge of the roadway and the kerb line;

**“special events”** means events that occur from time to time, including, without limitation, sports games, music festivals, religious, social, cultural or political gatherings;

**"street furniture"** means any furniture installed by the Municipality on a street for public use;

**"Traffic Act"** means the National Road Traffic Act, 1996 (Act No. 93 of 1996); and

**"verge"** means, as defined in the Traffic Act, the portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway on the shoulder;

1.2For the purpose of this by-law a single act of selling in a street, public road, public place or similar area or place constitutes informal trading.

1. **Purpose of By-law**

2.1 The purpose is to regulate informal trading within the area of jurisdiction of the Municipality in order to –

1. ensure that informal trading is conducted in a legal and orderly manner;
2. open job and entrepreneurial opportunities in the informal trading sector;
3. promote the good relations between the informal and formal trading sectors;
4. ensure the good environmental health and safety of the public.
5. **Application of By-law**

3.1 This By-law is applicable within the area of jurisdiction of the Municipality and is binding on every person conducting informal trading therein.

1. **Forms of Informal Trading**

4.1Informal Trading includes, but not limited to, any of the following forms of trading:

1. street trading, which comprises the selling of goods or supply of services for reward in a public road;
2. trading in pedestrian malls;
3. trading at markets;
4. trading at transport interchange;
5. trading in public open spaces;
6. mobile trading such as from caravans and light motor vehicles;
7. roving traders;
8. trading in stalls or kiosks; and
9. trading at special events.
10. **Applications for Informal Trading**
    1. **Application Forms**

1. A person who wants to do informal trading within the jurisdictional area of the Municipality must apply to the Municipality on prescribed forms available at Municipal offices.
2. The Municipality will consider the application within the period of

ten (10) working days upon the date of the receipt of the application forms.

1. For the application to be considered, the applicant must complete the forms fully, and attach to the forms the relevant documents mentioned subsection (5.3) below.

* 1. **Identity Trading Card Permits**

5.2.1 The following types of trading cards and the validity periods thereof, shall be issued by the Municipality:

1. *Street Trading Card Permit*: valid for period of one (1) year calendar month.
2. *Mobile Trading Card Permit*: valid for period of one (1) year calendar month.
3. *Special Event Trading Card Permit*: valid for the duration of the special event.
4. *Seasonal Trading Card Permit*: valid for period of three (3) months.

5.2.2 The following terms and conditions apply to the trading card permits and the trading sites issued and allocated by the Municipality respectively:

1. trading card permit can only be issued by the Municipality upon the payment of the prescribed fee determined by Council from time to time;
2. every informal trader must, at all times, be in possession of the trading card permit whenever he is conducting business;
3. trading card permit and trading sites remain, at all times, the property of the Municipality;
4. trading card permit is not transferrable and however, the trading site can transferrable through the permission by the Municipality;
5. an informal trade must at all times be in a position to produce the trading card permit on demand by the authorised officer when he is engaged in trading;
6. if the trading card permit gets lost or accidentally or unwillingly damaged or destroyed the informal trader must immediately report the loss, damage or destruction thereof to the Municipality;
7. the Municipality may reduce, extend and or disestablish any trading site. At least 30 days written notice should be given to an informal trader to vacate a site that will be disestablished and the Municipality is under no obligation to offer any alternative site in this regard;
8. informal trader may not be allowed to have more than one (1) informal trading site;
9. any informal trading on the trading site may be temporarily suspended during the special events, should circumstances so warrant;
   1. **Requirements for Applicants**

An applicant should meet the following requirements:

1. *South African Identity Document*, if he/she is a South African citizen;
2. *Proof of Residence*, if he/she is a Mangaung resident;
3. *Original Copy of Asylum Document or Temporary Resident Permit* issued by the South African Department of Home Affairs, if he/she is a foreign national;
4. He/she must not be employed by the Municipality, its entities or any organ of the State;
5. He/she must be eighteen (18) years old or above.
   1. **Approval of Application**
6. Once the application has been approved by the relevant Head of Department or his designee, an applicant will be notified of the

approval within the period of five (5) working days, and the relevant trading card permit will be issued to the informal trader.

1. Informal trader is not permitted to trade until he receives his identity trading card permit and the trading site has been allocated to him.
   1. **Disapproval of Application**
2. If the Municipality, by the Head of Department or his designee, has decided to disapprove the application, the applicant will be notified of the decision to disapprove his application within the period of five (5) working days.
3. The applicant will be provided with written reasons for the disapproval, and the decision can be in terms of the provisions of this By-law or its regulations or in terms of any legislation applicable or circumstances warranting the Municipality to arrive at such decision.

* 1. **Appeal against Disapproval**

1. The applicant whose application has been disapproved has the right to appeal against decision.
2. The affected applicant must lodge his appeal with the City Manager within the period of fourteen (14) days upon the receipt of the notice of the disapproval.
3. The City Manger must considered and decide on the appeal within the period of fifteen (15) working days.
4. The decision by the City Manager is final and binding.
5. **Allocation or Lease of Sites**

6.1 If the application has been successful:

1. In respect of lease, the Municipality may erect structures on informal trading sites and such structures shall be leased on a monthly basis to the informal trader to whom the site have been allocated.

(i) A lease agreement should be produced at the request of an

authorised official.

1. In respect of non-lease, the Municipality will allocate an applicant with an informal trading site after issuing of the informal trading card permit and the payment of the prescribed fees determined by the Council from time to time.
2. **Trading Days and Hours**
   1. The following trading days and hours, excluding public holidays and days of special events, apply in respect of informal trading in terms of this by-laws:

|  |  |
| --- | --- |
| **Day** | **Hours** |
| Monday – Friday | 07H00 – 18H00 |
| Saturdays | 07H00 – 15H00 |
| Sundays | 07H00 – 13H00 |

* 1. Trading hours on public holidays shall be regarded as trading hours of

Sundays. In other words, trading hours is allowed between 07H00 and

13H00.

* 1. On special event days, the Municipality may prescribe trading hours as it deems necessary for the purposes of or considering the nature and duration of hours of the event.

1. **Hygiene Requirements**
   1. An informal trader must –
2. keep the area or site occupied by him or her for the purposes of such business in a clean and sanitary condition;
3. keep his or her property in a clean, sanitary and well maintained condition;

(c) dispose of litter generated by his business in whatever receptacle as provided by the Municipality for the public or at a dumping site of the Municipality;

(d) not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;

(e) ensure that on completion of business for the day, the area or site occupied by him or her for the purposes of trade is free of litter;

(f) take such precautions in the course of conducting his or her business as may be necessary to prevent the spilling onto a public road, or public place, or into a storm water drain, of any fat, oil or grease;

(g) ensure that no smoke, fumes or other substance, odours, or noise emanating from his or her activities causes pollution of any kind;

(h) on request by an authorised official of the Municipality, move his or her property so as to permit the cleansing of the space of the area or site where he or she is trading, or the effecting of council services.

1. **Prohibited and Restricted Areas**
   1. The Council may, by resolution and in terms of section 6A(2) of the

Act, declare any place in its area of jurisdiction to be an area in which informal trading is restricted or prohibited, and must, to enable compliance therewith, prescribe or make signs, markings or other devices indicating-

1. specified hours, places, goods or services in respect of which

informal trading is restricted or prohibited;

(ii) the locations of boundaries of restricted or prohibited areas;

(iii) the boundaries of a stand or area set apart for the purposes of the carrying on of the business of informal trading;

(iv) the fact that any such stand or area has been let or otherwise allocated; and

(v) any restriction or prohibition against informal trading in terms of this By-law;

9.2 The Municipality may display any such sign, marking or device in such a position and manner as will indicate any restriction or prohibition and or the location or boundaries of the area or stand concerned;

9.3 Any sign erected in terms of this By-law or any other law, must serve as sufficient notice to an informal trader of the prohibition or restriction of the area concerned; and

9.4 Any sign may be amended from time to time and displayed by the Municipality for the purpose of this By-law, and any such sign shall have the same effect as a road sign in terms of the Traffic Act.

1. **Prohibited Conduct**
   1. No person must carry on the business of an informal trader:-
2. at a place or in an area declared by the Council in terms of

section 6A(2)(a) of the Act as a place or area in which informal trading is prohibited;

1. in a garden or a park to which the public has a right of access;

(c) on a verge contiguous to -

(i) a building belonging to, or occupied solely by, the State or the Municipality;

(ii) a church or other place of worship;

(iii) a building declared to be a Public monument;

(iv) an auto-teller bank machine;

(d) at a place where it causes an obstruction in front of –

(i) a fire hydrant;

(ii) an entrance to or exit from a building;

1. at a place where it could obstruct vehicular traffic;
2. at a place where it could substantially obstruct a pedestrian in

his or her use of the sidewalk;

1. 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 that building objects thereto and such objection is made known to the informal trader by an authorised officer;

1. on a stand, or in any area demarcated by Municipality in terms

of section 6A(3)(b) of the Act, if he or she is not in possession of a written proof that he or she has hired such stand or area from the Municipality, or that such stand has otherwise been allocated to him or her ;

1. within 5 (five) meters of any intersection; and
2. on a sidewalk contiguous to a building in which business is

being carried on by any person who sells goods of the same or of a similar nature to the goods being sold on such sidewalk by the informal trader, if the goods are sold without the prior consent of such person and an authorised officer has informed the informal trader that such consent does not exist.

* 1. A person who has hired a site from, or been allocated a site by the

Municipality, may not trade in contravention of the terms and conditions of such lease or allocation.

**11. Restricted Conduct**

11.1 A person carrying on the business of an informal trader –

1. may not sleep overnight at the place of such business;
2. may not erect any structure for the purpose of providing shelter, other than a device approved by the Municipality;
3. may not place his or her property on a public road or public place, with the exception of his or her motor vehicle or trailer from which trade is conducted, and provided that such vehicle or trailer does not obstruct pedestrian and vehicular traffic movement, and complies with the provisions of the Traffic Act;
4. must ensure that his or her property or area of activity does not cover an area of a public road or public place which is greater in extent than six square metres (with a maximum length of three metres) or unless otherwise approved by the Council, and which on any sidewalk leaves an unobstructed space for pedestrian traffic, the length of the property or area of activity, and not less than 1,5 metres wide, measured from any contiguous building to the obstructed area, and an unobstructed space, the length of the property or area of activity, and not less than 0,5 metres wide, measured from the kerb of the roadway;
5. may not trade on a sidewalk where the width of such sidewalk is less than three metres;
6. may not place or stack his or her property in such a manner that it constitutes a danger to any person or property, or is likely to injure any person or cause damage to any property;
7. may not display his or her goods or other property on or in a building, without the consent of the owner, lawful occupier, or person in control of such building or property;
8. must, upon request by an authorised officer of the Municipality, or supplier of telecommunication or electricity or other Municipality services, move his or her property so as to permit the carrying out of any work in relation to a public road, public place or any such service;
9. may not attach any of his or her property by any means to any building, structure, pavement, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public place;
10. may not carry on such business in such a manner as to –

(i) create a nuisance;

(ii) damage or deface the surface of any public road or public place, or any public or private property; or

(iii) create a traffic and/or health hazard, or health risk, or both.

1. may not make an open fire on a public road or public place;
2. may not interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window, or obscure such goods from view.

(m) may not obstruct access to a pedestrian crossing, a parking or loading bay or other facility for vehicular or pedestrian traffic;

(n) may not obstruct access to, or the use of, street furniture and any other facility designed for the use of the general public;

(o) may not obscure any road traffic sign displayed in terms of the Traffic Act, or any marking, notice or sign displayed or made in terms of these by-laws;

(p) may not carry on business, or take up a position, or place his or her property on a portion of a sidewalk or public place, in contravention of a notice or sign erected or displayed by the Municipality for the purposes of these by-laws;

(q) may not, other than in a refuse receptacle approved or supplied by the Municipality, accumulate, dump, store, or deposit, or cause or permit to be accumulated, dumped, stored or deposited, any litter on any land or premises or any public road or public place or on any public property;

(r) may not place on a public road or public place his or her property that is not capable of being easily removed to a storage place away from such public road or public place, at the end of the day's business;

(s) must on concluding business for the day remove his or her property, except any structure permitted by the Municipality, to a place which is not part of a public road or public place;

(t) may not store his or her property in a manhole, storm water drain, public toilet, and bus shelter or in a tree;

(u) may not handle any foodstuffs including meat in a manner contrary to applicable law;

(v) may not carry on such business in a place or area in contravention of any prohibition or restriction approved by the Council in terms of section 6A(2)(a) of the Act.

**12. Prohibited Goods**

12.1 The following goods must not be sold by informal traders:

(a) any form of alcohol or alcoholic drinks;

(b) vehicles, trailers or caravans;

(c) any noxious or smelly substance or article that may cause a nuisance;

(d) pesticides, insecticides, poisonous and, or hazardous substances;

(e) any counterfeit goods or articles;

1. drugs;
2. guns and similar dangerous weapons;
3. endangered species;
4. any goods on embargo;
5. protected ornaments and artwork pieces; and
6. any goods prohibited by any piece of legislation, e.g selling of beer or

cigarette to persons under the age prohibited.

12.2 The following goods may not be sold by informal traders, except with the prior

written permission of the Municipality:

1. live-stock;
2. pets;
3. reptiles;
4. birds;
5. rabbits;
6. wild animals;
7. poultry;
8. raw meat or fish;
9. milk;
10. yoghurt;
11. cosmetics; and
12. clay soil.

**13. Cancellation or Suspension of Informal Trading Card Permit**

13.1 The Council may cancel or suspend the informal trader’s trading card permit if:

(a) an informal trader fails to pay any prescribed fees, as determined in terms of this By-law, to the Municipality within a prescribed time,

and

(b) the informal trader is found guilty of a contravention of any provision of this By-law and any other piece of legislation upon which this By-law is based.

**14. Removal and Impoundment**

14.1 An authorised official may remove and impound any property, except

perishable foodstuffs, of an informal trader-

1. which he or she reasonably suspects is being used or which intended

to be used or has been used in or in connection with informal trading;

and

1. which he or she finds at a place where informal trading is restricted or

prohibited and which constitutes an infringement of any such restriction or prohibition whether or not such property is in possession or under the control of any person at the time of such removal or impoundment.

14.2 Any authorised official acting in terms of subsection (14.1) above must, except where goods have been left or abandoned, issue to the person carrying on the business of an informal trader, a receipt for any property so removed and impounded, which receipt must -

(i) itemise the property to be removed and impounded;

1. provide the address where the impounded property will be kept, and the period thereof;
2. state the conditions for the release of the impounded property;
3. state the terms and conditions relating to the sale of unclaimed property by public auction; and
4. provide the name and address of a municipal official to whom any representations regarding the impoundment may be made, and the date and time by which this must be done.

14.3 If any property about to be impounded is attached to any immovable property or a structure, and such property is under the apparent control of a person present thereat, any authorised officer may order such person to remove the property, and if such person refuses or fails to comply, he or she is guilty of an offence.

14.4 When any person fails to comply with an order to remove the property referred to in subsection (14.3), any authorised officer may take such steps as may be necessary to remove such property.

14.5 Perishable foodstuffs must be retained by the informal trader who must immediately remove such foodstuffs from the prohibited trading area.

14.6 The Municipality may provide storage facilities for the storage of any property impounded in terms of this By-law.

* 1. Goods impounded may be returned to a street trader after payment of the

determined fines and prescribed fees levied for impounding and storing,

except if a magistrate makes another ruling in this regard.

14.8 The Municipality may get rid of any impounded and stored goods, after the period of seven (7) days of the date of the impoundment, that have not been claimed and collected from the Municipality after the due processes, in terms of subsections (14.6) and (14.7) have been followed.

14.9 Any authorised officer shall not be liable for any loss or theft of or damage to any goods removed and impounded or got rid of in terms of this By-law.

**15. Vicarious Liability**

15.1 When an employee or agent of an informal trader contravenes a provision

of this by-law, the informal trader is deemed to have committed the

contravention himself unless he she satisfies the court that he she took

reasonable steps to prevent such contravention.

15.2 The fact that the informal trader issued instructions to the employee or agent, prohibiting such contravention, does not in itself constitute sufficient proof of such reasonable steps.

**16. Offences and Penalties**

16.1 A person who -

(a) contravenes any provision of this by-law or fails to comply therewith or with any condition imposed in terms thereof;

(b) threatens, resists, interferes with or obstructs any authorised officer in the performance of his duties or functions in terms of or under this by-law;

(c) deliberately furnishes false or misleading information or offering a bribe to an authorised officer;

(d) fails to comply with an instruction from an authorised officer to move or remove his or her goods, receptacles structures, litter or refuse;

(e) fails to comply with any condition granted or imposed in terms of this by-law;

(f) ignores, disregards or disobey any notice, sign or marking displayed or erected for purposes of this by-law,

shall be guilty of an offence and shall upon conviction by a court be liable to a fine not exceeding R 10 000-00, or imprisonment for a period not exceeding one (1) year or both a fine as well as period of imprisonment, or such other fine or period of imprisonment which the Minister of Justice may from time to time determine in terms of the provisions of section 92 of the Magistrate’s Courts Act, 1944 (Act No 32 of 1944)

16.2 Any person who, after conviction in terms of this by-law, persists in the conduct or neglect which caused the offence shall be guilty of a continuing offence and liable to a fine of at least R500 per day for each ensuing day that the contravention persists.

16.3 Any expenses incurred by the Municipality as a result of a contravention of

this by-law or in the doing of anything which a person was directed to do

under this By-law and which he failed to do, may be recovered by the

Municipality from the person who committed the contravention or who failed to do such thing.

**17.** **Informal Trading Regulations**

17.1 The Council may make regulations in respect of:

1. declaring any area to be an area in which informal trading is restricted or prohibited, and putting signs, markings or other devices indicating such declaration;
2. setting apart and demarcating sites or areas for the purposes of informal trading and the extension, reduction or disestablishment thereof;
3. the disposal of any property removed and impounded, and the liability of any person for any reasonable expenses incurred in connection with such removal, impoundment and storage of the property;
4. the prescription of penalties for the offences committed and the amendment of such penalties from time to time;
5. any matter which may be prescribed in terms of this By-law and any matter which may facilitate the implementation and enforcement of this By-law.

17.2 The Municipality must follow the legislative process of public engagement, in terms of the Local Government: Municipal Systems Act of 2000, by:

1. publishing in the local newspaper(s) or local radio station(s) a notice calling for public comments on the draft regulations for a period of not less than fourteen (14) days before the Council can consider and pass the regulations, and
2. the passed regulations must be promulgated in the Provincial Gazette for the purposes of enforcement.

**18. Repeal of By-laws**

18.1 The Street Trading By-law as promulgated in the Local Government Notice No. 4 of 20 January 2006 is hereby repealed.

19. **Short Title and Commencement**

19.1 This By-law is called **Mangaung, Informal Trading By-law** and comes into operation on the date of publication in the *Provincial Gazette.*