

**BY-LAW RELATING TO:
STUDENT ACCOMMODATIONS**

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1. DEFINITIONS AND INTERPRETATIONS

In this By-law unless the context indicates otherwise,

“Approval”

means any written permission or consent use given by the Mangaung Metropolitan Municipality, with or without conditions.

“Authorized Official”

means an employee of the Municipality or any other person to whom the Council has delegated powers for the purposes of enforcement of this By-law.

“Council”

means the Council of the Mangaung Metropolitan Municipality as established in terms of the Local Government: Municipal Structures Act 117 of 1998 and include any other Committee of Council, Councillor or Municipal Official acting by virtue of powers delegated.

“Landlord”

means the owner or operator of a student accommodation establishment that is leased and includes his/her duly authorized agent or a person who is in lawful possession of the accommodation and has the right to lease or sub-lease it.

“Lease”

means an agreement of lease concluded between a tenant and a landlord in respect of a student accommodation establishment for studying purposes.

“Municipality”

means Mangaung Metropolitan Municipality established by the Provincial Notice No. 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);

“Occupier” or “Occupant”

in relation to any building, structure or land, means and includes any person in actual

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occupation of or legally entitled to occupy such building, structure or land, or any person having the charge or management thereof, and includes the agent of any occupier absent from the area or whose whereabouts are unknown.

“Ordinance”

means the Land Use Planning Ordinance of 1985 (Ordinance No.15 of 1985) together with any amendment thereof.

“Owner”

means the person in whose name the land is registered in a deed registry, and may include the holder of the registered servitude right or lease, and any successor in the title of such a person as defined in the Ordinance.

In terms of this By-law an “owner” refers to a “landlord”

“Resident”

means any person who, on a permanent basis, lives, resides, inhabits, sleeps, or has an abode in any dwelling unit or residential building of any nature whatsoever which he uses as his fixed residential address;

“Rezoning”

means the alteration to a building or premises in order to effect a change of zoning to particular land;

“Student”

means a person who is registered to study with a tertiary institution within the area of jurisdiction of the Municipality and stays at a student accommodation establishment approved by the Municipality and accredited by the relevant tertiary institution.

“Student Accommodation”

means an accommodation establishment which is a dwelling place for the student(s) who registered to study with a tertiary institution within the area of jurisdiction of the Municipality and the accommodation establishment has been approved by the Municipality and accredited by the relevant tertiary institution.

“Student Accommodation Manager”

means the property owner, landlord or any person, other than a student, who resides permanently on the property and will be responsible for the control, management, administration of the students and student accommodation;

Tenant”

means a legal occupant of a rented property; may have signed a lease agreeing to pay rent for the property.

In terms of this By-law a “tenant” refers to a “student” as defined hereinabove.

Use Right”

in relation to land, means the right to utilise that land in accordance with the zoning thereof, including any departure.

“Zoning”

means the development rights and controls accorded to the property and its associated buildings either as of free entry rights, rights that area accorded in term of

Municipal approval#

2. PURPOSE OF BY-LAW

The purpose of the By-law is to:

- 2.1 Regulate the establishments of student accommodations within the area of jurisdiction of the Municipality by:
 - 2.1.1 prescribing requirements and standards to be met for premises to be established as student accommodations;
 - 2.1.2 providing safe, neat, secure, law-abiding accommodations for students and surrounding neighbourhood; and
 - 2.1.3 ensuring good management and conducive environment for students for learning and living;

3. SCOPE OF APPLICATION

- 3.1 The By-law applies to all newly-established and existing student accommodation establishments throughout the jurisdictions of the Municipality.
- 3.2 The By-law applies to every owner or operator and any student who stays in the approved and accredited student accommodation establishments.

4. UNDERLYING PRINCIPLES

- 4.1 The By-law is based, inter alia, on the following principles:
 - a) Student accommodations respecting the right to dignity, privacy, adequate housing, healthy and secure environment;
 - b) Environment conducive for learning and living; and
 - d) Good governance and compliance with legislation.

5. LEGISLATIVE FRAMEWORK

5.1 Constitution of Republic South Africa (Act№ 108 of 1996)

The 1996 Constitution stipulates that everyone has the right to have access to adequate housing.

5.2 Housing Act of 1997 (Act № 107, 1997)

The Housing Act mandates every spheres of government to ensure that housing development provides a wide choice of housing and tenure options as reasonably as possible, amongst other priorities.

5.3 Rental Housing Act of 1999 (Act № 50, 1999)

The Rental Housing Act stipulates that government should create mechanisms to promote the provision of rental housing property in order to promote access to adequate housing.

5.4 Spatial Planning and Land Use Management Act of 2013 (Act № 16, 2013)

The Spatial Planning and Land Use Management Act (SPLUMA) is applicable throughout the Republic and it is intended:-

- i. to provide a framework for spatial planning and land use management in the Republic;
- ii. to specify the relationship between the spatial planning and land use management system and other kinds of planning;
- iii. to provide for inclusive, developmental, equitable and efficient spatial planning at the different spheres of government;
- iv. to provide a framework for the monitoring, coordination and review of the spatial planning and land use management system;
- v. to provide a framework for policies, principles, norms and standards for spatial development planning and land use management;
- vi. to address past spatial and regulatory imbalances;
- vii. to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for land use decisions and development applications;
- viii. to provide for the establishment, functions and operations of Municipal Planning Tribunals;
- ix. to provide for the facilitation and enforcement of land use and development measures; and
- x. to provide for any matter in relation therewith.

5.5 Relevant Municipal By-laws

Other by-laws of the Municipality find expression in matters provided by this By-law and must also be complied with. Such by-laws are, inter alia:

- a) Municipal Land Use Planning By-law of 2015;
- b) Building Regulations By-laws of 2016;

- c) Outdoor Advertising By-Law of 2008, amended 2015;
- d) Environmental Health By-Law of 2013;
- c) Noise Control By-law of 2016;
- e) Public Nuisance By-law of 2016;
- d) Firefighting Services By-law of 2013;
- e) Parking By-law of 2013;

5.6 Municipal Spatial Development Framework (SDF)

The Municipality's SDF provides that the provision of houses can be achieved by using a number of densification mechanisms, such as supporting additional dwelling units, higher density, residential buildings (flats) and increased intensification of land uses, such as mixed use developments at close proximity to public transport corridors, services and places of employment.

6. APPLICATION PROCEDURES

6.1 Lodging of Application

The applications must be lodged in terms of the Municipal Land Use Planning By-laws of the Municipality.

The applications for the operation of the new Student Accommodations must be lodged with the Municipality so that it can be registered.

The applicant must submit the application form in Schedule "A" to this By-law and the form must be accompanied by all the relevant documents as prescribed herein in sub-section 6.2 below.

The existing non-registered accommodations must submit their applications for registration purposes to be compliance with the provisions of this By-law.

The previously approved accommodations must comply with the provisions of this By-law, without necessarily taking away their existing use rights.

6.2 Relevant Application Documents

6.2 1 The following documents are required when submitting an application for the establishment of Student Accommodation:

- i. *Certified copy of Title Deed* pertaining to the relevant property;
- ii. *Power of Attorney* if an application is submitted on behalf of the property owner;

- iii. *Company/Trust Resolution* if the application is submitted on behalf of the property owned by a Company/Trust;
- iv. *A locality plan*;
- v. *An affidavit* that the owner permanently resides on the property and/ or a full-time manager has been hired to look after the students.
- vi. *A letter from the tertiary institution* that confirms that the property has been registered on the Off-campus Student Accommodation data base to provide accommodation for students.
- vii. *Application motivation report* (covering desirability, parking, number of students, room sizes, number of bedrooms, parking, etc).

6.2.2 Applications must be accompanied by prescribed application fee, determined by Council from time to time.

6.3 Publication of Application

The Head: Planning may cause an application submitted in terms of the applicable Municipal Land Use Planning By-laws to be published if he/she is of the opinion that someone may be adversely affected by the proposed development.

6.4 Evaluation Criteria

Student Accommodation Applications will be assessed on individual merit. The Municipality will take the following into account when considering applications for approval:

- a) The applicable Zoning Scheme.
- b) Principles and policies established for such applications by the National and Provincial spheres of government.
- c) Any objection received on or before the closing date in response to a publication of the application, as well as comments received from other organs of the state.
- d) Any response received from the applicant to objections or comments made;
- e) The impact of the proposed use on the amenity of the surrounding area and the anticipated impact on the character of the area, including but not limited to impact on traffic flow, noise and pollution generation.
- f) Applications will be assessed on the basis of the following factors:

- i. desirability of the contemplated utilization of the land concerned;
- ii. spatial guidelines, such as the Municipality's SDF and LSDF.
- iii. effects on the existing rights (except any alleged right to protect against trade competition).
- iv. the safety and welfare of the community.
- v. the preservation of the natural and developed environment.

6.5 Conditions of Approval

- a) The Municipality may approve or refuse an application and may attach any conditions consistent with any applicable Zoning Scheme and may include provisions not contained in any applicable Zoning Scheme or that may be more or less restrictive than the standard provisions applying to the zone concerned;
- b) An application approved by the Municipality will lapse if the land concerned has not been utilized within the time specified by the Land Use Management System (LUMS) after the date on which the approval was granted, provided that the Municipality may grant an extension of such time if requested to do so in writing before the application has lapsed.
- c) Conditions of approval imposed by the Municipality will have the same force and effect as if they were part of the applicable Zoning Scheme.
- d) The Municipality may terminate any land use right granted or change conditions relating to a consent use granted if any breach of approval or conditions of approval has, in the opinion of the Municipality, taken place. The Municipality may request the breach to be remedied within a specified period of time.
- e) The rights granted to operate Student Accommodation will be attached to the property and not the applicant.
- f) In the event that there are objections to the decision made by the Municipality with regard to the application, an appeal to review the decision must be submitted within the time specified by the Municipal Land Use Planning By-laws.
- g) The owner or student accommodation manager must be on the accommodation twenty four (24) hours a day to ensure, inter alia, the compliance with this By-law.
- h) An affidavit to confirm a twenty four (24) hour a day presence on the property, as required by sub-section 6.5 g) above, must accompany the application.

6.6 Non-compliance with Conditions of Approval

- (a) If approval conditions are not complied with, the Planning Department will issue a written notice to the owner and/or student accommodation manager to rectify any irregularities within 7(seven) days.
- (b) If complaints are received with regard to the approved student accommodation, the Planning Department will evaluate the validity of the complaints and where applicable, notify the owner and/or student accommodation manager about the complaints and further give a written notice to the owner and/or student accommodation manager to comply with the conditions put by the Municipality.
- (c) Failure to comply with points (a) and (b) above may lead to the Municipality declaring the accommodation closed and will notify the relevant tertiary institution(s) to de-accredit.

6.7 Withdrawal and Lapsing of an Approval

Approval is granted to the owner of the property to establish a student accommodation and will be withdrawn under the following circumstances:

- (a) When the property is alienated.
- (b) In the event of the death of the owner.
- (c) Valid objections have been received and an interdict against the owner has been obtained.
- (d) Where the accommodation is a cause of nuisance to surrounding neighbourhood.
- (g) Where the relevant institution has de-accredited the accommodation.
- (h) Where the Council has declared the accommodation closed in terms of violation of the approval conditions imposed or any other provisions of this By-law.

6.8 Appeal against Disapproval

- (a) The applicant whose application has been disapproved has the right to appeal against the decision.
- (b) The affected applicant must lodge his appeal with the Municipal Land Use Appeals Tribunal within the period of fourteen (14) days upon the receipt of the notice of the disapproval.
- (c) The Municipal Land Use Appeals Tribunal must be considered and decide on the appeal within the period of ten (10) working days.

- (d) The decision by the Municipal Land Use Appeals Tribunal is final and binding.

7. GENERAL TERMS AND CONDITIONS

7.1 Council Approval:

A student accommodation must be approved by the Municipality and be established on the zoned property.

7.2 Accreditation:

A student accommodation must be accredited by a relevant tertiary institution(s).

7.3 Alterations:

If the accommodation is established on the dwelling house, the residential character of the dwelling house may not be altered in a manner that, in the opinion of the Council, will detract from the character of a dwelling house. No alterations will be permitted unless approved by the Municipal Council.

7.4 Number of students/rooms:

Only five (5) rooms can be utilized to accommodate students in a single dwelling house.

Not more than two (2) students may be accommodated in any double bedroom and such double bedroom shall have a floor area of not less than fourteen square metres (14 m²).

Not more than ten (10) students shall be accommodated in a single dwelling house where each of the five (5) bedrooms are regarded as double bedrooms.

In cases where students are accommodated in a single bedrooms, such single bedrooms shall have a floor area of not less than six (6) square metres (6 m²)

No overcrowding is allowed.

7.5 Parking:

One (1) parking bay be provided for every two (2) students accommodated, excluding parking for the owner, if applicable.

No parking in front of driveways and on pedestrian walkways is permitted.

7.6 Cooking:

No cooking of meals shall be permitted in individual bedrooms or any common area except in an area designated on an approved building plan as a kitchen or braai area.

Cooking facilities should at least be a stove, a fridge, a sink, lockable cupboards, a microwave oven and a workplace, that can be used by a maximum of fifteen (15) students.

7.7 Ablution facilities:

No more than five (5) students must share a bath or shower and toilet

7.8 Social facilities:

There should be a general social area (common entertainment area/meeting & TV room) – at least two square metres (2 m²) per student.

- 7.9 **Public nuisance:**
The accommodation shall not cause or create any nuisance to neighbouring residents.
Nuisance in this regard may include excessive noise, particularly late at night or in regard to regular partying.
A twenty four (24) hour contact number to which residents or any one can report any nuisance must be provided by the accommodation manager or the owner.
- 7.10 **Screening:**
The Municipality may prescribe that any parking area, drying yards and/or entertainment areas from neighbouring residential properties and/or public streets be screened.
- 7.11 **Lease agreement:**
There must be a lease agreement concluded between the owner and all students residing at the student accommodation concerned.
The agreement must, inter alia, provide for the management issues regarding the accommodation facility.
- 7.12 **Accommodation manager:**
Either the owner or student accommodation manager must permanently reside on the property for purposes of the management of the accommodation.
- 7.13 **Accreditation:**
A student accommodation facility must be accredited by a relevant tertiary institution(s) and the owner must be provided with the accreditation policy and code of conduct of the institution(s), if such exists.
- 7.14 **Maintenance:**
The accommodation manager or the owner must ensure that the facility is, at all times, well maintained or kept clean and neat.
Dumping or littering is prohibited.
- 7.14 **Signage:**
The accommodation must put up a signage indicating that the accommodation is an approved and accredited student accommodation facility
- 7.15 **Location:**
Accommodation should be a kilometer distance from a relevant tertiary institution.
However, each application should be assessed on its own merit and special attention shall be given to the impact of the proposed use to the historical character of the dwelling house as well as the impact of the student accommodation in densely developed area such as group housing areas.

8. ROLES AND RESPONSIBILITIES OF KEY ROLE PLAYERS

8.1 The Municipality:

- 8.1.1 Approve student accommodation establishments;
 - 8.1.2 Ensure and enforce compliance with the By-law;
 - 8.1.3 Close unauthorized and illegally operating student accommodations;
 - 8.1.4 Establish and maintain a database of approved student accommodations.
- 8.2 Student Accommodation Owners:**
- 8.2.1 Register their student accommodation establishments with the Municipality;
 - 8.2.2 Appoint and ensure Student Accommodation Manager resides at the establishment twenty four (24) hours a day;
 - 8.2.3 Register with relevant tertiary institution for accreditation purposes;
 - 8.2.4 Have copy of Accreditation Policy and Code of Conduct of the relevant tertiary institution;
 - 8.2.5 Ensure that the provisions of the By-law are implemented and complied with;
 - 8.2.6 Keep the premises and buildings of the establishment in clean, hygienic and good conditions at all times;
 - 8.2.7 Conclude a lease agreement between himself/herself and every student residing at the accommodation.
- 8.3. Tertiary Institutions:**
- 8.3.1 Accredite suitable student accommodation establishments;
 - 8.3.2 Keep database of all accredited student accommodation establishments and all students residing at the respective establishments;
 - 8.3.3 Provide owners of the student accommodation establishments with its Accreditation Policy and Code of Conduct;
 - 8.3.4 De-accredit any unsuitable student accommodation establishments;
 - 8.3.5 Provide accommodation for 20% of their registered students.
- 8.4 Residing Students:**
- 8.4.1 Conclude lease agreement with approved and accredited student accommodation establishment owners;
 - 8.4.2 Comply with Code of Conduct of the tertiary institution they enrolled with;

- 8.4.3 Behave in an acceptable manner, at all times, and not cause or create any public nuisance, dumping or littering and parking illegally.

9. TRANSITIONAL ARRANGEMENTS

- 9.1 The Municipality should, by public notice, call all the unapproved student accommodation establishments within the area of jurisdiction of the Municipality to apply for approval.
- 9.2 All the unapproved student accommodation establishments must have been registered with the Municipality within the period of twelve (12) months upon the promulgation of this By-law in the provincial gazette.
- 9.3 Any unapproved student accommodation establishments that will not have registered with the Municipality in terms of the public notice to be issued by the Municipality, prescribing deadline for registrations of existing student accommodation establishments, will be regarded operating illegally after such a prescribed date.
- 9.4 The applications for existing unapproved student accommodation establishments must also comply with the application procedure of this By-law.
- 9.4 Any new student accommodation establishments after the coming into operation of this By-law must apply, in terms of the application procedure of this By-law, before they can operate

10. OFFENCES AND PENALTIES

- 10.1 Any person who operate a student accommodation establishment business without a Municipal approval shall be liable to a fine not exceeding R5 000, 00.
- 10.2 In the case of continuous offence, an additional fine of one thousand rand (R1 000.00) will be imposed for each day on which the offence continues.
- 10.3 Any other offence, in violation of the By-law, will be determined by the Magistrate.

11. REPEAL

Any by -laws relating to student accommodation adopted by the former municipalities now forming part of the Municipality, are repealed from the date of promulgation of this By-law.

12. SHORT TITLE AND COMMENCEMENT

This By-law is called ***Mangaung, Student Accommodations By-law*** and comes into effect on the date of promulgation thereof in the Free State Provincial Gazette. #