

TOWNSHIPS (AMENDMENT) ACT, 2004

No. 19



of 2004

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Townships Act

Date of Assent: 14th May, 2004.

Date of commencement: On notice.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Townships (Amendment) Act, 2004, and shall come into operation on such date as the Minister may, by Order published in the Gazette, appoint.

2. The Act is amended by deleting the words “city or town council” wherever they appear in the Act.

3. The Act is amended by inserting, immediately after section 1 thereof, the following new section —

“Inter-
pretation

1A. In this Act, unless the context otherwise requires —
“bye-law enforcement officer” means an officer appointed under section 6H;

“bye-law-enforcement unit” means a unit established under section 6G to enforce bye-laws made by a council;

“council” means a city or town council established in accordance with section 4(1)(b); and

“township authority” means an authority established by regulations made under this Act to conduct the affairs of the council concerned and to perform such functions as may be specified in those regulations.”.

Short title and
commence-
ment

General
amendment of
Cap. 40:02
Amendment
of the Act

Amendment
of section 5 of
the Act

4. The Act is amended in section 5(3) thereof, by substituting —
- (a) for paragraph (a) thereof, the following new paragraph —
“(a) to establish, maintain and operate abattoirs;”;
 - (b) for paragraph (b) thereof, the following new paragraph —
“(b) to establish, maintain and operate beer depots and beer halls;”.

Amendment
of section 6
of the Act

5 Section 6 of the Act is amended by substituting, therefor, the following new section —

“Power to
make bye-laws

6. (1) A township authority may make bye-laws for the township in respect of which it is established, or any part thereof, in respect of all such matters as it considers necessary or desirable for the maintenance of the health, order and good government of the area in respect of which it is established, and, without prejudice to the generality of the foregoing, make bye-laws for all or any of the purposes set out in the First Schedule hereto, and for setting service and user fees for services set out in the Second Schedule.

(2) A council may make bye-laws for —

- (a) the regulation and control of abattoirs established under section 5(3)(a) hereof, and fixing fees, charges and tariffs in connection therewith; and
- (b) the regulation and control of beer depots and beer halls established under section 5(3)(b) hereof, and fixing prices, fees and charges in connection therewith.

(3) The bye-laws referred to in subsection (2) may prescribe what licences or permits may be required thereunder and may lay down the fee to be paid therefor, and may also prescribe the fees to be paid for any services rendered by the council.”

Amendment
of the Act

6. The Act is amended by inserting, immediately after section 6 thereof, the following new sections —

“Bye-laws
to be
submitted to
Minister

6A. All bye-laws made by a council shall be submitted to the Minister for his approval, and no bye-laws shall be of any force or effect until the Minister has approved them and caused them to be published in the Gazette.

Miscellaneous
provisions
regarding bye-
laws

6B. (1) The substance and effect of all bye-laws which are to be submitted to the Minister for approval shall, not less than four weeks before such submission, be communicated to the inhabitants of the council area affected by posting notices on notice boards in the council area, and by publication thereof at such public meetings as the council may determine.

(2) A copy of all bye-laws shall be kept by the council which made them in such manner as the Minister may prescribe, and any member of the public shall be entitled to a copy of such bye-laws upon payment of such fee as the council may determine.

Penalties in
bye-laws

6C. (1) Bye-laws may —

- (a) prescribe a penalty for any contravention thereof which shall not exceed a fine of P 5000 or imprisonment for 2 years, or both such fine and imprisonment;
- (b) prescribe different fines and different terms of imprisonment for successive or continuous contraventions; and
- (c) authorize any court on conviction of any person for contravention of bye-laws to suspend or cancel any licence or permit issued to such person under such bye-laws.

(2) Bye-laws may provide that where a court convicts any person for any contravention thereof, or for failure to comply therewith, such court may, in addition to imposing any penalty prescribed therefor, order that any expense incurred by the council in consequence of the breach thereof, or caused by the failure of the offender to execute any work which he is directed thereby to execute, shall be paid by the convicted offender.

Bye-laws not
to override
other laws

6D. Nothing contained in this Act shall be deemed to empower a council to make any bye-law overriding or derogating from the provisions of any other written law in force in Botswana.

Minister may
suspend bye-
laws

6E. If, at any time in the opinion of the Minister, it is in the interest of good local government or the maintenance of good order and security of the council area or part thereof for which a council has been established, or of Botswana, that the operation of any bye-laws made by a council should be suspended, the Minister may, by order published in the Gazette, suspend such bye-laws for a period not exceeding 60 days and for the like period may transfer the powers of the council relating to such bye-laws to any person.

Minister
may make or
amend bye-
laws

6F. The Minister may make, any bye-law which a council could make and may amend or revoke any bye-laws made by a council, if he considers the matter to be of importance and in the public interest:

Provided that he has requested the council, in writing, to make such a bye-law or amendment or revocation, and the council has not complied with such request at its first meeting after such request has been received.

Bye-Law
enforcement
units

6G. There shall be a bye-law enforcement unit in every council to enforce bye-laws made by the council.

Bye-law
enforcement
officers

6H. (1) A bye-law enforcement unit shall consist of such number of bye-law enforcement officers as a council may determine and appoint.

(2) A council shall furnish every person appointed as a bye-law enforcement officer with an identity card stating that such person is duly appointed by the council for the purposes of enforcing bye-laws and such identity card shall be *prima facie* evidence of such appointment.

Powers of
arrest

6I. (1) A bye-law enforcement officer may, without a warrant, arrest a person if he reasonably suspects that that person has contravened or is contravening a bye-law.

(2) A bye-law enforcement officer may use such force as is reasonable in the circumstances in effecting an arrest under this section; and for the purpose of effecting an arrest, enter and search any premises or place if he has reason to believe that there is in the premises or place a person who is to be arrested.

(3) A bye-law enforcement officer shall not enter any premises or place unless he has first stated that he is a bye-law enforcement officer and the purpose for which he seeks entry and produced his identity card to any person requesting its production.

Powers of
search and
arrest

6J. (1) Where a bye-law enforcement officer has arrested a person under section 6I, he may —

- (a) search that person and the premises or place in which he was arrested; and
- (b) seize and detain anything which he has reason to believe to be or to contain evidence of any contravention of a bye-law.

(2) A bye-law enforcement officer shall only search a person of the same sex as he.

Procedure
after arrest

6K. A bye-law enforcement officer shall take any person arrested under section 6I as soon as is practicable to a police station to be dealt with in accordance with the Criminal Procedure and Evidence Act.

Cap. 08:02
Search with
warrant

6L. (1) If it appears to a bye-law enforcement officer that there are reasonable grounds to believe that there is in any premises or place anything which is or contains evidence of contravention of a bye-law, he may make an application on oath to a magistrate for a warrant to search such premises or place.

(2) If a magistrate to whom an application is made under subsection (1) is satisfied that there are reasonable grounds for suspecting that there is in the premises or place referred to in subsection (1), anything which is or contains evidence of a contravention of a bye-law, he may issue a warrant directing the bye-law enforcement officer to enter and search such premises or place and seize and detain anything which the bye-law enforcement officer has reason to believe to be or to contain evidence of any contravention of a bye-law.

Search without warrant in certain cases

6M. (1) Where a bye-law enforcement officer has reasonable cause to believe that there is in any premises or place anything which is evidence of a contravention of a bye-law or in respect of which a contravention of a bye-law is about to take place, is being conveyed, or is concealed or contained in any package in the premises or place for the purpose of being conveyed, he may, without warrant, if he considers that the special exigencies of the case so require, enter the premises or place, and search the premises or place and seize and detain that thing.

(2) The entry and search referred to in subsection (1) shall, as far as possible, be made in the day time and in the presence of two or more respectable inhabitants of the locality in which the entry and search is made.

Exercise of powers of search and seizure

6N. In the exercise of the powers of search and seizure under section 6M, a bye-law enforcement officer may use such reasonable force as is necessary in the circumstances, and may be accompanied or assisted by such other persons as he considers necessary to assist him to enter into or upon the premises or place, as the case may be.

Penalty for hindering or obstructing a bye-law enforcement officer

6O. Any person who hinders or obstructs a bye-law enforcement officer in the performance of his duties under this Act shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding one year, or to both.

Imposition and collection of fines

6P. (1) A bye-law enforcement officer may impose such fines for contraventions of bye-laws as a council may determine:

Provided that any fine determined by the council under this section shall not exceed P5 000.

(2) A council shall directly collect any fines imposed by a bye-law enforcement officer under subsection (1) and such fines shall accrue to the council concerned.

Collection of debt

6Q. If any person who has been fined under section 6P fails, within a stipulated period, to pay the fine to the council, the council may recover the fine in a court of law as a civil debt."

7. The Act is amended in section 7 thereof —

- (a) by deleting subsection (2)(a) thereof; and
- (b) by inserting, immediately after subsection (2) thereof, the following new subsection —

“(3) A township authority may by bye-law —

- (a) fix and levy rates on land for municipal purposes; and
- (b) fix fees, charges and tariffs for such services as may be provided by the township authority.”

8. The Act is amended by inserting, immediately after section 7 thereof, the following new sections —

Amendment of section 7 of the Act

Amendment of the Act

"Powers of township authority to set service and user fees by resolution

7A. A township authority may, by resolution, set service and user fees for services set out in the Third Schedule hereto.

Powers of Minister to amend Schedules

7B. The Minister may, by statutory instrument, amend the Schedules hereto."

Amendment of section 8 of the Act

9. Section 8 of the Act is amended by substituting, for subsection (1) thereof, the following new subsection —

"(1) Regulations or bye-laws may prescribe penalties for any breach thereof, but no such penalties shall exceed a fine of P 5000, or, in default of payment thereof, to imprisonment for a term not exceeding 2 years, or such imprisonment without the option of a fine or both such fine and imprisonment."

Amendment of the Act

10. The Act is amended by inserting, immediately after section 10 thereof, the following new Schedules —

**"FIRST SCHEDULE
(Section 6(1))**

POWER TO MAKE BYE-LAWS

1. For the better carrying into effect of any function conferred on the council in terms of regulation 28 of the Town Council Regulations as read with the First Schedule thereof.
2. To control common lands and pastures.
3. To control common markets.
4. To control recreation grounds, parks and other public places.
5. To control stockyards, pens and dipping tanks.
6. To control cemeteries and burial grounds.
7. To control or prevent advertising, dangerous trades, nuisances, noises and street collections.
8. To regulate, control and license laundries.
9. To regulate, control and license the brewing, distribution and sale of traditional beer.
10. To license bicycles.
11. To fix and levy rates upon land, which may include different rates upon different classes of land, for municipal purposes.
12. To regulate and control abattoirs established by the council and to fix fees, charges and tariffs in connexion therewith, which may include charges for the inspection of carcasses.
13. To regulate and control premises on which traditional beer is sold or otherwise handled which have been established by the council, and to fix prices, charges and tariffs in connection therewith.

SECOND SCHEDULE
(Section 6(1))

Services for which service and user fees shall be set by bye-law

NO. SERVICES

1. Abattoir services
2. Certificates of rights conversions
3. Clinical services
4. Matimela or pound services
5. Property rates services
6. School services
7. Issuing of trade licences

THIRD SCHEDULE”
(Section 7A)

Services for which service and user fees shall be set by resolution of a township authority

NO. SERVICES

1. Advertising signs
2. Cemetery services
3. Community services
4. Day care centre services
5. Hiring of classrooms
6. Provision of markets or factory shells
7. Pest control services
8. Plan perusal and building control services
9. Plant hire services
10. Refuse removal services
11. Road reinstatement services
12. Sanitation services
13. Septic tank emptying services
14. Sewer connection services
15. Sewerage services
16. SHHA services
17. Shrub and plant sale services
18. Stadia sport facilities
19. Staff house rentals
20. Stock sales commission
21. Surveys and plans services
22. Leasing of boreholes
23. Water connection services

PASSED by the National Assembly this 25th day of March, 2004.

A. MATLHAKU,
Clerk of the National Assembly.