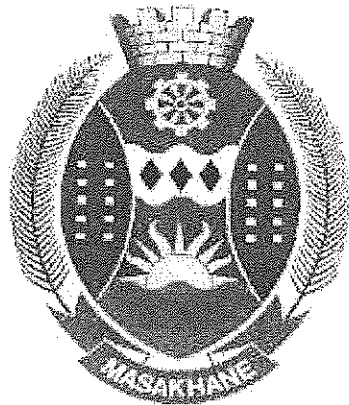


STEVE TSHWETE LOCAL MUNICIPALITY



SAND MINING BY-LAWS, 2021

LOCAL AUTHORITY NOTICE 91 OF 2021**STEVE TSHWETE LOCAL MUNICIPALITY****SAND MNING BY-LAW, 2021**

Notice is hereby in terms of Section 13 of the Local Government: Municipal Systems Act, 32 of 2000, as amended, read with Section 156 and 162 of the Constitution of the Republic of South Africa, 108 of 1996, that the Steve Tshwete Local Municipality resolved to adopt the following Nuisance By-Laws, with effect from the date of publication.

TABLE OF CONTENTS

1. DEFINITIONS
2. PURPOSE OF BY-LAW
3. SCOPE AND APPLICATION OF BY-LAW
4. LEGISLATION FRAME WORK
5. APPLICATION
6. CONTROL MEASURES
7. DELEGATION
8. OFFENCES AND PENALTIES
9. TRANSITIONAL ARRANGEMENTS
10. REPEAL
11. SHORT TITLE AND COMMENCEMENT

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this By-law, unless the context otherwise indicates:

“Act”	the Bills enclosed herein which have been passed through the various legislative steps required for it and which have become law.
“Asylum Seeker”	means a person who is seeking recognition as a refugee in the Republic.
“Authorised Officer”	means an official of the Municipality who has been authorised by the Municipality to administer, implement and enforce the provisions of this By-law.
“berms”	a flat strip of land, raised bank or terrace bordering a river or canal.
“Council”	means the council of Steve Tshwete Local Municipality, a Municipality established in terms of section 12 of the local Government Municipal Structures Act, no.117 of 1998 and any member of administration to whom the Council has delegated the powers, functions and duties vesting in the Council in relation to this By-law.
“extract”	to remove or take out, especially by effort or force.
“geomorphology”	is the scientific study of the origin and evolution of topographic and bathymetric features created by physical, chemical or biological processes at or near Earth’s surfaces.
“Head”	means the head of the relevant Department of the Municipality.
“Municipality”	means Steve Tshwete Local Municipality.
“Municipal Consent”	means the consent, in writing, by the Municipality for any activity on, or use of land or buildings for which an application is made, in terms of any relevant legislation.
“Public Nuisance”	means any activity which spills over beyond the property and causes problem for immediate and surrounding neighbours; this includes noise levels or activities which may cause health or pollution problems such as smoke or flies/ vermin, vehicle oil or unsightly activities / storage of goods which detract from the amenity of the neighbourhood.
“Operating permit”	card the legally valid sand mining permit that has been issued by the Municipality when all the requirements that are set out in the below By-law have been met.

“Operator”	means the owner of the sand mining permit for purposes of this By-law.
“Outbuilding”	means a building attached to or separate from a dwelling and ancillary to a dwelling.
“Owner”	means the person in whose name the site/erf is registered in the deeds registry for Mpumalanga Province or he/she is the beneficial holder of a real right in the site/erf or he/she is the person in whom the site/erf vests.
“Person”	means a natural person or a juristic person, and includes an organ of state.
“Premises”	in relation to any sand mining operation, means a site/erf wherein the sand mining business is operated.
“Property”	means that to which a person has a legal title, whether in his possession or not; thing owned; an estate, whether in lands, goods or money.
“Refugee”	means any person who has been granted asylum in terms of the Act (Act No.130 of 1998)
“Residential Areas”	a residential area is a type of land use where the predominant use is housing. In areas that are zoned residential, buildings may include single family housing, multiple family housing such as apartments, duplexes and town homes.
“Sand”	is not legally defined in the Mineral and Petroleum Resources Development Act, but is referred to in the definition of mineral as follows :- “mineral” means any substance, whether in solid, liquid or gaseous form occurring naturally in or on earth or under water and which was formed by or subjected to a geological process and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits, but excludes – <ul style="list-style-type: none">• Water, other than water taken from land or sea for the extraction of any mineral from such water;• Petroleum or• Peat
“Sand mining”	means the extraction of sand from the environment. Sand mining is also known as “sand winning” and the term “winning” is referred to in the official definition of the “mine” contained in the Mineral and Petroleum Resources Development Act;

“mine” when used as a verb means any operation or activity for the purpose of winning any mineral on, in or under the earth, water or any residue deposit, whether by underground or open working or otherwise and includes any operation or activity incidental thereto.

“Zoning”

Legislative process that divides privately-owned urban areas into different zones (such as residential, commercial, industrial), according to the specified land use. Each zone is regulated for usage in terms of the Municipal approval.

“Prescribed fee”

means a fee determined by the Council by resolution in terms of Section 10G (7) (a) (ii) of the Local Government Transition Act 1993 (Act No.209 of 1993), or any other applicable legislation.

1.2 In the event of conflict between this By-law and any other By-law of the Municipality, the provisions of this By-law shall prevail regarding the regulation of Sand Mining.

2. PURPOSE OF BY-LAW

2.1 The purpose is to regulate and control the operations of Sand Mining within the area of jurisdiction of the Municipality, in particular, to ensure compliance with safety and health requirements. To promote the establishment of Sand Mining within the Steve Tshwete Local Municipal area, in such a way that the activity of Sand Mining can achieve two important objectives:

- conserve the resource (natural sand and the rivers and dams)
- to allow an orderly and sustainable exploitation of the resource

3. SCOPE AND APPLICATION OF BY-LAW

The By-law applies to all Sand Mining operations that are located within the area of jurisdiction of the Municipality.

4. LEGISLATIVE FRAMEWORK

The major relevant legislation upon which the by-law is based are:

- 4.1 Constitution of the republic of South Africa Act No.108 of 1996
- 4.2 Spatial Planning and Land Use Management Act No.16 of 2013
- 4.3 The Promotion of Administrative Justice Act No.3 of 2000
- 4.4 National Building Regulations and Building Standards Act No.103 of 1977 and National Building Regulations & Building Standards Amendment Act No.49 of 1995
- 4.5 Mineral and Petroleum Resources Development Act 28 of 2002
- 4.6 Steve Tshwete Town Planning Scheme 2004

4.7 National Environmental Management Act, 1998 (Act No.107 of 1998)

4.8 The National Water Act (No.36 of 1998)

Other national and provincial legislations, not mentioned herein above, are also applicable as well and as other by-laws of the Municipality.

4.9 Steve Tshwete Local Municipality Air Quality Management Plan

4.10. Steve Tshwete Local Municipality Environmental Policy

4.11. Steve Tshwete Local Municipality Nuisance By-law

5. APPLICATION

PROCEDURES

5.1 Application Forms

- 5.1.1 A person who wants to conduct Sand Mining operations in one jurisdiction of Steve Tshwete Local Municipality must apply to the Council on a prescribed form available at the Municipal offices.
- 5.1.2 The Municipality will consider the application within the period of twenty one (21) working days upon the date of the receipt of the application forms.
- 5.1.3 For the application to be considered, the applicant must complete the forms fully, and attach to the forms the relevant documents mentioned in subsection (5.3) below

5.2 Sand Mining Permits applied through DMR

- 5.2.1 Before Sand Mining Operations, the applicant must be in possession of a mining permit issued in terms of the Mineral and Petroleum Resources Development Act 28 of 2002, which *inter alia* states the following:-
 - 5.2.1.1 The permit holder must submit a copy of financial provision/guarantees to the Municipality for the rehabilitation or management of negative environmental impacts
- 5.2.2 A mining permit may only be issued if:-
 - 5.2.2.1 The mineral in question can be mined optimally within a period of two years, and
 - 5.2.2.2 the mining area in question does not exceed 5.0 hectares in extent
- 5.2.3 No person may conduct sand mining operations on municipal land which is not authorized or permitted as such for the purposes of sand mining , the applicant must lodge an application:-

- 5.2.3.1 In writing at the Environmental and Solid Waste Management department;
- 5.2.3.2 in the prescribed manner ; and
- 5.2.3.3 together with the prescribed non-refundable application fee
- 5.2.4 The Director : Environmental and Solid Waste Management must accept the Sand Mining authorisation application if:-
- 5.2.4.1 The requirements contemplated in subsection (5.2.3) are met;
- 5.2.4.2 No other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land
- 5.2.4.3 The granting of the Sand Mining authorization will not result in the applicant being granted more than one (1) mining authorization on the same adjacent land.
- 5.2.5 If the application does not comply with the requirements of this section, the Director: Environment and Solid Waste Management must notify the applicant in writing within fourteen (14) days of the receipt of the application.
- If the Director accepts the application, the Regional Manager must within twenty-one (21) days of the receipt of the application, notify the applicant in writing, to submit relevant environmental reports.
- 5.2.6 The Director: Environmental and Solid Waste Management must within 30 days of receipt of the environmental reports from the applicant, issue a Sand Mining authorisation if :-
- 5.2.6.1 The requirements contemplated in subsection (5.2.3) are satisfied;
- 5.2.6.2 The environmental authorization is issued;
- 5.2.6.3 The applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No.29 of 1996)
- 5.2.7 The holder of the Sand Mining authorisation:-
- 5.2.7.1 May enter the land to which such permit relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface or underground infrastructure which may be required for the purpose of mining;
- 5.2.7.2 Subject to the National Water Act, 1998 (Act No.36 of 1998), may use water from any natural spring, lake, river or stream situated on, or flowing through, such land or from any excavation previously made and used for prospecting or mining purposes, as the case may be, or sink a well or borehole required

for use relating to prospecting or mining, as the case may be, on such land, and

5.2.7.3 In terms of any relevant law, must pay the Municipal levies;

5.2.7.4 May mine, for his or her own account under that mining area for the mineral for which such authorization relates;

5.2.7.5 Must submit the Sand Mining authorisation for recording at the Cooperate Services: Legal and Administration within 30 days after the authorisation has been issued.

5.2.8 A Sand Mining authorisation:-

5.2.8.1 Is valid for the period specified in the authorisation, which may not exceed a period of two (2) years, and may be renewed for three (3) periods each of which may not exceed one (1) year;

5.2.8.2 May not be transferred, ceded, let sublet, alienated or disposed of, in any way whatsoever, but may be encumbered or mortgaged only for the purpose of funding or financing of the mining project in question with the Municipal consent.

5.2.9 The application of Sand Mining authorisation to the Municipal Council will enable the process of a Sand Mining Authorisation by the Municipal Council.

5.2.10 The Sand Mining authorisation shall be issued by the Municipality

5.2.11 The following terms and conditions shall apply to the Sand Mining authorisation:

5.2.11.1 Sand Mining authorisation can only be issued by the Municipality upon the payment of the prescribed fee determined by Council from time to time;

5.2.11.2 Sand Mining authorisation is not transferable under any circumstances without the written and approved permission of the Municipality;

5.2.11.3A Sand Mining authorisation must at all times be in a position to produce the operating card permit on demand by the authorised officer or employee of the municipality whenever so required;

5.2.11.4 If the operating card permit gets lost or accidentally or unwillingly damaged or destroyed the owner must immediately report the loss, damage or destruction thereof to the Municipality.

5.3 Criteria to be satisfied for the Application for a Sand mining area/land

5.3.1 A person who wishes to conduct Sand Mining operations shall on the prescribed form (5.1 above) apply to the Municipality;

5.3.2 Shall indicate a clear plan for the clearing of vegetation on the land to be used;

- 5.3.3 Shall indicate a construction of access to road;
- 5.3.4 Shall show cause for the establishment of a temporary site camp, no permanent structure is to be constructed on the land to be used;
- 5.3.5 Shall show cause for the establishment of a temporary ablution structures;
- 5.3.6 Shall indicate a clear plan for the diverting of the flow of the river and the altering of the banks of a river;
- 5.3.7 Shall indicate a plan for the extracting of sand from a deposit and extracting of water from the river or dam;
- 5.3.8 Shall indicate a plan for the building of berms;
- 5.3.9 Shall indicate a plan for the temporary stockpiling of material;
- 5.3.10 Shall indicate a plan for the storage of diesel and oil and maintenance of vehicles and plant;
- 5.3.11 Shall submit mine layout plan, Basic Assessment Report, Rehabilitation plan, Environmental Management Plan; Waste Management Plan;
- 5.3.12 Shall indicate any plan to carry out any other activity incidental to the Sand Mining operations to be conducted;
- 5.3.13 Sand Mining permit may only be renewed to applicants who have a good record of compliance;
- 5.3.14 Refugees with formal recognized status van operate a Sand Mining site;
- 5.3.15 Foreign nationals in possession of South African identity documents can operate and own a business anywhere in the country except participate in voting processes or elections.

5.4 Requirements for Applicants

Completed application forms must be accompanied by the following documents:

- 5.4.1 Certified copy of *South African Identity Document*, if he/she is a South African citizen;
- 5.4.2 *Proof of Residence*, if he/she is within the jurisdiction of Steve Tshwete Local Municipality resident;
- 5.4.3 *Original Copy of Asylum Document* issued by the South African Department of Home Affairs, if he/she is a foreign national;

- 5.4.4 Concluded *Lease Agreement* in cases where the site owner is not the Sand Mining operator;
- 5.4.5 Certified copy of *title deed* or *permission to occupy*;
- 5.4.6 Neighbouring community's consent form;
- 5.4.7 Building plan of the Sand Mining operation which must be submitted to the building control unit for Municipal approval with a contractual agreement where necessary, signed between the owner of the property and the applicant if the applicant is not the title deed holder; and
- 5.4.8 Internal and external photos of the existing building(s) on the site, (for those that had not applied prior to commencing with operating)

5.5 General criteria for Sand Mining operations

- 5.5.1 A standard form pack is received from the Municipality to the applicant;
- 5.5.2 The application pack includes the Environmental Impact Assessment which consists of a questionnaire with basic questions that the applicant must fill in together with an appointed Environmental Assessment Practitioner as appointed by the applicant;
- 5.5.3 In some cases, at the Municipality's discretion, a geotechnical assessment is to be conducted by the Head of the Environmental department, as chosen and paid for by the applicant;
- 5.5.4 Once all the information has been submitted to the Regional manager, the pack shall be circulated to other regulatory authorities for comment, in particular the Department of Water Affairs, the provincial environmental department and the municipality officials. Where comments are received from these authorities, the Regional manager will forward the comments to the applicant and give him or her an opportunity to respond;
- 5.5.5 The applicant must lodge a financial provision for the purposes of rehabilitation of the site once the mining is completed;
- 5.5.6 Once the Regional manager has assessed all the information, the pack shall be sent to the Municipality with the decision to grant or refuse the Sand Mining permit.

5.6 Approval of Application

- 5.6.1 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 twenty-one (21) working days.

- 5.6.2 The applicant will be required to pay the prescribed operating fee and he/she will then be issued with the operating permit.
- 5.6.3 The Sand Mining operator is not permitted to trade until he/she receives his Sand Mining operating permit
- 5.6.4 Approval conditions, if any, will be attached to the operating permit.

5.7 Disapproval of Applicant

If the Municipality, by the Head of Department or his designee, has decided to disapprove the application, the applicant will be notified of the:

- 5.7.1 Decision to disapprove his application within the period of twenty-one (21) working days.
- 5.7.2 The applicant will be provided with sound written reasons for the disapproval, and the decision can be in terms of the provisions of this By-law or in terms of any legislation applicable or circumstances warranting the Municipality to arrive at such decision.

5.8 Appeal against rejected Application

- 5.8.1 The applicant whose application has been disapproved has the right to appeal against the decision.
- 5.8.2 The affected applicant must lodge his appeal with the Municipal Manager or any person having similar authority to deal with the matter, within the period of twenty-one (21) days upon the receipt of the notice of the disapproval.
- 5.8.3 The Municipal Manager or any person having similar authority to deal with the matter must consider and decide on the appeal within the period of fourteen (14) working days.
- 5.8.4 The decision by the Municipal Manager is final and binding.

5.9 Withdrawal and Lapsing of an Approval

Approval is granted to the owner of the Sand Mining permit and will be withdrawn under the following circumstances:

- 5.9.1 When the site is alienated for a period of at least 60 days.
- 5.9.2 In the event of the death of the owner of the Sand Mining permit.
- 5.9.3 Valid objections have been received and an interdict against the owner of the Sand Mining permit is obtained.
- 5.9.4 The owner of the property or Sand Mining permit is arrested in connection with drug abuse, selling of drugs, the sale of liquor, prostitution, gun incidents, knife stab incidents or any other criminal incidents.

- 5.9.5 Where the owner terminates the lease agreement with the Sand Mining operator.
- 5.9.6 Where just cause is shown that the operations are of nuisance to surrounding neighbourhood.
- 5.9.7 Where operating permit conditions are not complied with.
- 5.9.8 Where any provision of this By-law and any, other relevant, legislation and policies is violated.
- 5.9.9 When the permit expires.
- 5.9.10 A company or close corporation is deregistered in terms of the relevant Acts and no application has been made or was made to the Minister of Minerals for the consent in terms of section 11 of the Mineral and Petroleum Resources Development Act 28 of 2002.
- 5.9.11 The holder of the permit is liquidated or sequestrated.

5.10 Non-compliance with Approval Conditions

- 5.10.1 If approval conditions are not complied with, the Head of Department will issue a written notice to the operator to rectify any irregularities within ten (10) working days.
- 5.10.2 Where complaints are received with regard to the approved Sand Mining operations, the following steps shall be taken:
- The Head of Department will evaluate the validity of the complaints and
 - Where applicable, notify the operator about the complaints and
 - Further give a written notice to the operator to comply with the conditions put by the Municipality.
- 5.10.3 Failing to comply with points (5.10.1 and 5.10.2) above may lead to the Municipality cancelling the operating permit and further seeking court interdict against the operator compelling the owner to stop business operations on the property.

6. Control Measures

Any approved Sand Mining operation business must abide by the following terms and conditions, to the extent that they are applicable:

- 6.1 The mining area in question shall not exceed 5.0 hectares in extent.
- 6.2 The owner of the Sand Mining operations permit may operate the business on site. Only in exceptional circumstances may the operational business activity be conducted by anyone other than the owner of the permit.

- 6.3 No Sand Mining operations may operate if building plan for the site has not been applied for and approved by the Municipality.
- 6.4 Sand Mining operation structure must comply with the Act and Regulations and Building Regulations By-law of the Municipality.
- 6.5 A Sand Mining operation shall only be operated with operating card permit issued by the Municipality and the operating card permit is not transferable.
- 6.6 The sale of liquor or alcohol beverages, any illegal substances and hazardous substances is prohibited on site.
- 6.7 A Sand Mining operation should not cause or be a cause of any kind of disturbance or public nuisance which will disturb people within the neighbourhood.
- 6.8 The operating hours for all Sand Mining operations is allowed between 06:00 in the morning and 18:00 in the evening, every day except otherwise permitted by the Municipality.
- 6.9 In order for the application to be granted, the applicant has to lodge an application for an environmental authorization and consult with interested affected parties, including the land owners.
- 6.10 If the operations on site have ceased for the period longer than 60 days, it will be presumed that the business is no longer operating and the operator thereof or the owner of the site should inform the Municipality in writing.
The Municipality will proceed to cancel the operating permit in regard to that Sand Mining operation.
- 6.11 Where an operator has more than one Sand Mining operation site, the Municipality must be informed
- 6.12 No person is allowed to operate a Sand Mining site if he/she has been declared by a court of law to be of unsound mind.
- 6.13 The Sand Mining permit holder must not commit any criminal activity on the site in question or he/she must not have a criminal record that led to his/her business being closed.
- 6.14 No pets or birds should be kept on site.
- 6.15 Trading is restricted to the boundaries of the property. No trading is permitted out site the site boundaries.
- 6.16 No signs advertising the business shall be larger than 2m by 1m in size.
Such sign should indicate the name of the owner, the name of the business and the nature of the trade/operations. Any other sign must be applied for and approved by the Municipality before it can be erected. Advertising signs must comply with the Outdoor Advertising Bylaw of the Municipality.

- 6.17 Sand Mining operations may not be permitted on a property if the use is in conflict with the restriction contained in the title deed of that property.
- 6.18 The Sand Mining operations plan must show the layout, extent, position and elevations of buildings on the proposed plan.
- 6.19 No person may conduct sand mining operations on municipal land which is not authorized or permitted as such for the purposes of sand mining.

7. Delegation

- 7.1 Subject to the provisions of another legislation, the council may delegate or assign in writing any power, duty or function imposed by or under this By-law, to any person in its employ subject to such conditions as it may deem necessary.
- 7.2 In accordance with Section 25 of the Constitution, all property and Land should be protected from being expropriated without just and equitable compensation. The law must be of general application and there should be no arbitrator deprivation.
- 7.3 Section 37 of the Mineral and Petroleum Resources Development Act 28 of 2002 stipulates as follows:-
- 7.3.1 The principles set out in section 2 of the National Environmental Management Act, 1998 (Act No.107 of 1998) – apply to all prospecting and mining operations, as the case may be, and any matter or activity relating to such operation; and
- Serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this Act.
- 7.3.2 Any prospecting of mining operation must be conducted in accordance with generally accepted principles of sustainable development by the integrating social, economic and environmental factors into the planning and implementation of prospecting and mining projects in order to ensure that the exploitation of mineral resources serves present and future generations.
- 7.4 At all times the Steve Tshwete Local Municipality Planning and Land Use Management By-law, the National Building Regulations and Building Standards Act No.103 of 1977 read together with the Spatial Planning and Land Use Management Act No.16 of 2013 and the Steve Tshwete Town Planning Scheme of 2004, shall be consulted and all requirements relating to land, land use, land owners and legal occupiers of land shall be incorporated into any decision making into the granting of a Sand Mining operations permit.

8. Offences and penalties

- 8.1 Any person who operates a Sand Mining site without a Municipal approval shall be liable to a fine of R200 000-00
- 8.2 Sand Mining owner/operator who fails to renew their operating permit on time will be fined accordance with the prescribed fee and the site will be closed until the prescribed fee is paid.

8.3 In the case of continuous offence, an additional fine of as determined by the prescribed fee, will be imposed for each day on which the offence continues.

8.4 Any other offences, in violation of the By-law, will be determined by the Magistrate, in accordance with the Scheduled fines attachment herein.

8.5 A person mining on private land will be fined in accordance to the prescribed fees, if such person is found to be conducting sand mining operations on private land without prior authorisation from the Municipality.

9. Transitional arrangements

9.1 The Municipality should, by public notice, call all the existing Sand Mining operations within the area of jurisdiction of the Municipality to register their Sand Mining operations.

9.2 All the existing Sand Mining operations 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 existing Sand Mining operation 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 Sand Mining operations, will be regarded as operating illegally after such a prescribed date.

9.4 The application of the existing Sand Mining operations must also comply with the application procedure of this By-law and any other relevant legislation and policies.

9.5 Any new Sand Mining operation established 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. Repeal

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

11. Short title and commencement

This By-law is called *Steve Tshwete Local Municipality By-law for Sand Mining, 2021* and comes into operation on the date of promulgation thereof in the Mpumalanga Provincial Gazette.