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STREET TRADING BY-LAWS

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GENERAL EXPLANATORY NOTE

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underline with a solid line indicate insertions in existing enactments.

STREET TRADING BY-LAWS

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

Interpretation / Definitions

1. (1) In these by-laws, unless the context otherwise indicates.

- (i) “Act” means the Mpumalanga Businesses Act, 1996 (Act 2 of 1996);
- (ii) “authorised officials” means an official of the Council authorised to implement the provisions of these by-laws including Peace Officers, Traffic Officers and the South African Police Services.
- (iii) “Council” means the [.....]..... Local Municipality.
- (iv) “Demarcated Stand” means a demarcated stand as declared under Section 7(3)(b)(i) of the Act.
- (v) “garden or park” means a garden or park to which the public has a right of access;
- (vi) “goods” includes a living thing and any transferable interest;
- (vii) “intersection” means an intersection as defined in Section 1 of the Road Traffic Act, 1989 (Act 29 of 1989);
- (viii) “litter” includes any container or other matter which has been discarded, abandoned or left behind by a person trading or his customers;
- (ix) “national monument” means a building declared to be a national monument under the National Monuments Act, 1969 (Act 28 of 1969);

- (x) "Perishable foodstuffs" means foodstuffs as defined in terms of the Foodstuffs, Cosmetics and Disinfectant Act 1972 (Act 54 of 1972);
- (xi) "Person" includes a person carrying on any business referred to in Item 3(1) of Schedule 1 of the Act;
- (xii) "prohibited area" means any place declared under Section 7(2)(a) of the Act in which street trading is prohibited;
- (xiii) "property" in relation to a person carrying on the business of street trading, means any article, receptacle, vehicle or structure used or intended to be used in connection with such business, and includes goods in which he trades;
- (xiv) "public building" means a building belonging to or occupied solely by the State or the Council;
- (xv) "public place" means a public place as defined in Section 2 of the Local Government Ordinance, 1939 (Ordinance 17 of 1939);
- (xvi) "public road" means a public road as defined in Section 1 of the Road Traffic Act, 1989 (Act 29 of 1989);
- (xvii) "restricted area" means any place declared under Section 7(2)(a) of the Act in which street trading is restricted;
- (xviii) "roadway" means a roadway as defined in Section 1 of the Road Traffic Act, 1989;
- (xix) "sell" includes supply to and also
 - (a) exchange or hire;
 - (b) store, process, expose, offer or prepare for sale;
 and "sale" has a corresponding meaning;
- (xx) "services" includes any advantage or gain for consideration or reward offered in a restricted area;
- (xxi) "sidewalk" means a sidewalk as defined in Section 1 of the Road Traffic Act, 1989;
- (xxii) "Town Planning Scheme" means the Town Planning Scheme of [.....] Municipal area.
- (xxiii) "trade" means to sell goods or services in a public road or public place, and "trading" has a corresponding meaning;

(xxiv) “verge” means a verge as defined in Section 1 of the Road Traffic Act, 1989, and any word or expression to which a meaning has been assigned in the Mpumalanga Business Act, 1996, shall have that meaning.

(xxv) Any reference to a gender includes the other gender.

- (2) For the purpose of these by-laws a single act of selling or offering services in a public road or public place shall constitute trading.

Freedom to trade

2. Subject to the provisions of Sections 3 and 4 and any other relevant law, street trading is freely permitted except in so far as such trading is restricted or prohibited by Section 5 to 12 inclusive and Sections 14 and 15 of these by-laws, with the provision that no persons other than person with permanent residence in South Africa or South African citizens may trade in accordance with these by-laws.

General conduct

3. A person trading shall-

- (a) not place his property on the roadway;
- (b) ensure that his property does not cover an area of the sidewalk or public place which is greater in extent than 1m x 2m and which on any sidewalk does not leave a space less than 2m for pedestrian traffic measured over the width thereof, which space is subject to relaxation by Council.
- (c) not place or stack his property in such a manner that it constitutes a danger to any person or is likely to injure any person;
- (d) Not obstruct access to a fire hydrant;
- (e) on concluding business for the day remove his property, except any temporary structure permitted by the Council to a place which is not part of a public road or public place;
- (f) not display his goods or other property on a building or private property, without written consent of the owner, occupier or person in control of such building or property;
- (g) on request by an employee or agent of the Council or any supplier of telecommunication or electricity or other services, move his property so as to permit the carrying out of any work in relation to a public road, public place or any such services;
- (h) not attach any object 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;

- (i) not make a fire at a place or in circumstances where it could harm any person or damage a building or vehicle or any street furniture referred to in paragraph (h) or any Council property;
- (j) not store his property in a manhole or stormwater drain;
- (k) not trade nearer than 5m from a Bank or an automated teller machine.

Cleanliness

4. A person trading shall-

- (a) keep the area or site occupied by him for the purpose of such business in a clean and sanitary condition;
- (b) keep his property in a clean and sanitary condition;
- (c) dispose of litter generated by his business in whatever receptacles provided by the Council for the public or at the Council's dumping sites;
- (d) not dispose of litter in a manhole, stormwater 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 for the purposes of trade is free of litter;
- (f) in case of a vendor of foodstuffs take such precautions as may be necessary to prevent the spilling onto a public road or public place of any fat, oil or grease in the course of conducting his business and to prevent any smoke, fumes or odours emanating from his activities from becoming a nuisance;
- (g) on request by an employee or agent of the Council, move his property so as to permit the cleansing of the surface of the area or site where he is trading;
- (h) ensure food preparation, handling and selling is in accordance with the Council's health by-laws and relevant Regulations.

Obstruction of pedestrians

5. No person shall trade at a place where such trading substantially-

- (a) obstructs access to or the use of street furniture such as a bus passenger bench or shelter or queuing line, a refuse disposal bin or other facility intended for the use of the general public;

- (b) obstructs the visibility of a display window in business premises, if the person carrying on business in the business premises concerned objects thereto;
- (c) obstructs access to an entrance to or exit from a premise or an automatic bank teller machine;
- (d) obstructs access to a pedestrian crossing, if in the middle of a block a clear radius distance of 3m on either side of the crossing must be obeyed;
- (e) obstructs access to any vehicle; or
- (f) in any other manner obstructs pedestrians in their use of a sidewalk.

Obstruction of vehicular traffic

6. No person shall trade at a place where such trading-
- (a) causes an obstruction on a roadway;
 - (b) limits vehicular access to parking or loading bays or other facilities;
 - (c) obscures any road traffic sign or any marking, notice or sign displayed or made in terms of these by-laws; or
 - (d) interferes in any way with any vehicle that may be parked alongside such place.

Trading restricted to specified hours in certain places

7. No person shall trade-
- (a) on a verge contiguous to any place of worship, national monument or public building; or
 - (b) in a restricted area which is specified by Council resolution outside the hours so specified in relation to each such verge or area.

Trading restricted to specified goods or services in certain places

8. No person shall trade-
- (a) on a verge contiguous to any place of worship, national monument or public building, financial institutions; or
 - (b) in a restricted area which is specified by Council resolution other than in the goods or services so specified in relation to each such verge or area.

- (c) As a barber of hair dressing salon in a public place.

Trading restricted to demarcated stands or areas in certain places

9. No person shall trade-
- (a) on a verge contiguous to any place of worship, national monument or public building; or
 - (b) in a restricted area which is specified by Council resolution outside a stand or area set apart for trading purposes as contemplated in Section 7(3)(c) of the Act, no person may trade on such stand or in such area if he is not in possession of proof that he has hired such stand or area from the Council or that it has otherwise been allocated to him.

No trading in stands or areas which have been let except by the lessee

10. If the Council has let or otherwise allocated any stand or area set apart or otherwise established for street trading purposes, as contemplated in Section 7(3)(c) of the Act, no person may trade on such stand or in such area if he is not in possession of proof that he has hired such stand or area from the Council or that it has otherwise been allocated to him.

No trading near certain public buildings, places of worship and national monuments

11. No person shall trade on a verge contiguous to any place of worship, national monument or public building which is specified by Council resolution.

No trading in prohibited area

12. No person shall trade in any prohibited area.

Signs indicating restrictions and areas

13. The Council shall-
- (a) by resolution, prescribe signs, markings or other devices indicating-
 - (i) specific hours, places, goods or services in respect of which street trading is restricted;
 - (ii) the location or boundaries of a restricted area;
 - (iii) the boundaries of a stand or area set apart for the purposes of the carrying on of the business of street trading under Section 7(3)(b) of the Act;

- (iv) the fact that any such stand or area has been let or otherwise allocated;
- (v) any restriction or prohibition against trading in terms of these by-laws; and
- (vi) the location or boundaries of a prohibited area; and
- (b) display any such sign, marking or device in such a position and manner as will indicate the restrictions or the location or boundaries of the area or stand concerned.

Trading near residential buildings

14. No person shall, outside an area referred to in Section 7 to 12 inclusive, trade in that half of a public road contiguous to a building used for residential purposes within the demarcated areas of trading as specified in terms of these by-laws, if the owner, person in control or any occupier of any part of the building facing onto such road has objected thereto, provided that in a township or portion thereof mentioned in a resolution of the Council, this section shall not apply to a building used for residential purposes if such building is used for business purposes at ground level.

Trading near certain business premises

- 15.1 No person shall, outside an area referred to in Sections 7 to 12 inclusive, trade on a verge contiguous to that part of a building in which business is being carried on by any person who sells goods of the same nature as or of a similar nature to goods being sold by the first-mentioned person, other than a department store or supermarket without the consent of the second-mentioned person.
- 15.2 In the event of an extension of business by the trader onto the side walk, that part of the side walk that is occupied by the trader, shall be deemed as the business area of a hawker.

Removal and impoundment

- 16 (1) An authorised official may remove and impound any goods, article, receptacle, vehicle or structure-
- (a) which he reasonably suspects is being used or is intended to be used or has been used in or in connection with street trading; and
 - (b) which he finds at a place where street trading is restricted or prohibited in terms of Sections 14 and 15 and which, in his opinion, constitutes an infringement of any such section.
- (2)(a) The Council shall publish a notice in at least any two language newspapers circulating in the [.....]

Municipal area, containing the following information relating to objects removed in terms of sub section (1):

- (i) a description of the object, the address where the object is stored and, if known, the name of the owner;
 - (ii) that such objects may be claimed by the owners thereof on production of proof of ownership to the satisfaction of the Council;
 - (iii) that any object which has not been claimed within a period of three months from the date of publication of such notice will be destroyed or sold by public auction and the proceeds of such auction retained by the Council to defray its costs;
 - (iv) impoundment of “perishable foodstuffs” will be handled and disposed of in terms of the Health Act;
 - (v) pound fees will be charged as laid down from time to time by the Council.
- (b) The Council may sell by public auction any object unclaimed from it more than three months after a notice contemplated in sub paragraph (a)(iii) has been published in respect of such object, and may retain the proceeds of such auction or may destroy such object.
- (c) The Council shall not be liable for compensation to any person for damages arising out of the damage to or the loss of any object removed in terms of subsection (1) or the sale thereof by public auction, and the owner of such object shall have no claim or right of redress against the Council.
- (d)(i) If any object is attached to any immovable property or a fixture contemplated in subsection (1), and such object is under the apparent control of a person present thereat, any authorised official of the Council may order such person to remove the object, and if such person refuses or fails to remove the object, he shall be guilty of an offence.
- (ii) When any person fails to comply with an order to remove an object referred to in subparagraph (i), any officer of the Council may take such steps as may be necessary to remove the object.

Vending of newspapers and flowers

17.(1) Notwithstanding any other provision of these by-laws, and unless an intersection is otherwise specified by Council resolution as a prohibited or restricted area contemplated in Section 8, 9 and 12, no person other than a person who sells newspapers and flowers may carry on business on any sidewalk within 5 metres from any intersection.

- (2) No person who sells newspapers shall deposit his wares upon the ground or surface of any public place for the purpose of sale otherwise than in an orderly

pile neatly stacked and not exceeding 1m in length measured parallel to the kerb, or roadway, 450mm in width and 500mm in height above the sidewalk level.

Vending of ice-cream

- 17A Street vendors trading in ice-cream are permitted to trade from either a self-propelled motor vehicle, a bicycle, a tricycle or on foot in any street within residential areas and adjacent to school premises provided that the free-flow of traffic should not be interfered with.

Offences

18. Any person who contravenes a provision of these by-laws shall be guilty of an offence.

Presumptions

- 19.(1) In any prosecution for an offence under these by-laws, an allegation in the charge concerned that-

- (a) any goods with which a business was carried on were or were not of a particular kind, class, type or description or as it may be described by resolution of the Council;
- (b) any goods or services were sold or offered for sale;
- (c) any place was situate in a public road or public place or within a particular area;
- (d) any person carried on the business of street trading and in a manner and place alleged, shall be presumed to be correct unless the contrary is proved.

- (2) In any criminal proceedings for a contravention of these bylaws, where it is shown that-

- (a) any goods were displayed in a public place, such goods shall be presumed to have been offered for sale;
- (b) any property used in the provision of any service was available in a public road or public place, such services shall be deemed to have been offered for supply.

Penalties

20. Any person who is guilty of an offence in terms of these by-laws shall on conviction be liable to a fine, or to imprisonment for a period not exceeding 12 months.

Vicarious responsibility of persons carrying on business

21. When an employee of a person conducting the business of street trading does or omits to do any act which would be an offence in terms of these by-laws for that person to do or omit to do, that person shall be deemed himself to have done or omitted to do the act, unless he satisfies the court that-
- (a) he neither connived at nor permitted the act or omission by the employee concerned;
 - (b) he took all reasonable steps to prevent the act or omission; and
 - (c) an act or omission, whether lawful or unlawful, of the nature charged on no condition or under no circumstances fell within the scope of the authority or employment of the employee concerned, and the fact that the said person issued instructions whereby an act or omission of the nature is prohibited shall not in itself be sufficient proof that he took all reasonable steps to prevent the act or omission.

Vicarious responsibility of employees

22. When a person carrying on the business of street trading is by virtue of Section 20 liable for an act or omission by an employee of that person, that employee shall also be liable as if he were the person carrying on the business concerned.

SCHEDULE 1

DECLARING AREAS: STREET TRADING - AREA

The Local Municipality hereby gives notice in terms of Section 7(2)(f) of the Mpumalanga Business Act, 1996 (Act No.2 of 1996), that the Jurisdictional Area of Local Municipality is declared a prohibited area for street-trading with the exception of the areas as indicated below and subject to the conditions and stipulations of the above Act and the Local Municipality Street-Trading By-laws, with effect on date of this notice:

CENTRAL BUSINESS DISTRICT

Demarcated site number	Street	Location of hawking	Number of hawkers
1			
2			
3			
4			
5			
6			
7			
8			

SCHEDULE 2

DECLARING AREAS: STREET TRADING - MUNICIPAL AREA

Notice is hereby given in terms of Section 7(2)(h) of the Mpumalanga Business Act, Act 2 of 1996, that the Local Municipality resolved to amend Local Authority Notice 26, dated 05 February 1999, by adding the following:

NEWLY PROPOSED SITES FOR HAWKERS

[illegible]