

MAKHADO MUNICIPALITY

DRAFT TRADING: STREET TRADING BY-LAWS

TABLE OF CONTENTS

1. Definitions
2. Principles and objectives
3. Application
4. Legislative framework

CHAPTER 1: GENERAL PROVISIONS APPLICABLE TO STREET TRADING

5. Restricted and prohibited areas
6. Places where street trading is prohibited
7. Duties of street trader
8. Prohibited conduct
9. Removal and impoundment

CHAPTER 2: SPECIFIC PROVISIONS APPLICABLE TO STREET TRADING IN MEALS OR PERISHABLE FOODSTUFFS

10. Applicable provisions
11. Hawker's licence

CHAPTER 3: MISCELLANEOUS PROVISIONS

12. Notice of contravention
13. Penalty
14. Responsible person
15. Repeal

1. Definitions

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

“Act” means the Businesses Act, 1991 (Act No. 71 of 1991), and includes the regulations promulgated under the Act;

“approval” means approval by the Council and “approve” has a corresponding meaning;

“Council” means the Makhado Municipal Council and includes any committee or person to which or whom an instruction has been given or any power has been delegated or sub-delegated in terms of, or as contemplated in, section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) or a service provider in respect of any power, function or duty of the Council assigned by it for the purposes of these By-laws to that service provider in terms of Section 81(2) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“foodstuff” means foodstuff as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972); *¹

“garden” means a garden to which the public has a right to access;

“goods” means any movable property;

“intersection” means intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“licence holder” means a person who is the holder of a licence referred to in Chapter 2;

“litter” means any object or matter which is discarded by a person;

“motor vehicle” means a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“Municipal Manager” means municipal manager of Makhado Municipality;

“official” means a designated officer who is authorised by the Council to perform and exercise any or all of the functions and powers in these By-laws;

“park” means a park to which the public has a right to access;

*1 “foodstuff means any article or substance (except a drug as defined in the Drugs Control Act, 1965 (Act 101 of 1965) ordinarily eaten or drunk by a man 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 substance.”

“**premises**” includes any land, building, structure, part of a building or of a structure, or any vehicle, conveyance, vessel or aircraft;

“**prescribed**” means prescribed by the Council by resolution;

“**property**”, in relation to a street trader, means goods in which a street trader trades, and includes any article, container, vehicle or structure used or intended to be used in connection with street trading by the street trader;

“**public place** ”means a public place as defined in section 2 of the Local Government Ordinance,1939 (Ordinance No 17 of 1939);

“**public road**” means public road as defined in section 1of the National Road Traffic Act,1996 (Act No.93 of 1996);

“**roadway**” means a public roadway as defined in section 1 of the National Road Traffic Act,93 of 1996;

“**sell**” includes barter, exchange, hire out, display, expose, offer or prepare for sale, store with a view to sell, or provide a service for reward, and “sale” or

“**selling**” has a corresponding meaning:

“**sidewalk**” means a sidewalk as defined in section 1 of the National Road Traffic Act,93 of 1996;

“**street furniture**” means any furniture installed by the Council on the street for public use;

“**street trader**” means a person who carries on the business of street trading, and includes a person who carries on the business of street vendor, pedlar or hawker;

“**street trading**” means the selling of any goods or the supplying of or offering to supply any service for reward in a public road or public place by a street trader, and includes the taking up of a position or the placing of property or goods;

“**verge**” means a verge as defined in section 1 of the National Road Traffic Act,1996 (Act 93 of 1996), and any words or expressions to which a meaning has been assigned in the Business Act,1991, have a corresponding meaning in these By-laws.

- (2) A single act of selling or offering or rendering of services in a public road or public place shall constitute street trading.
- (3) A reference to a person carrying on the business of street trader includes the employee of the person.

2. Principles and objectives

The Council, acting in terms of section 6A(1)(a)(i) of the Businesses Act, 1991 (Act No. 71 of 1991) and-

- (a) having regard to the principles set out in the Act and in the Constitution; and
 - (b) taking into consideration the need of the residents to actively participate in economic activities; and
 - (c) taking into consideration the need to maintain a clean and healthy environment; and
 - (d) striving to ensure that its residents are not exposed to and are protected against harmful food,
- in these By-laws regulates street trading.

3. Application

These By-laws apply to all persons who carry on the business of the street trading within the area of jurisdiction of the Makhado Municipal Council.

4. Legislative framework

These By-laws fall within the legislative framework of the-

- (a) Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);
- (b) Health Act, 1977 (Act No. 63 of 1977);
- (c) Businesses Act, 1991 (Act No. 71 of 1991);
- (d) National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (e) Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996);
- (f) Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- (g) Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

CHAPTER 1: GENERAL PROVISIONS APPLICABLE TO STREET TRADING

5. Restricted and prohibited areas

- (1) The Council may, in terms of section 6A(2)(a) of the Act and subject to the provisions of paragraphs (b) up to and including (j), by resolution declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited.
- (2) The Council must be erected a sign in the area indicate such area, and the sign must indicate-
 - (a) the restriction of the prohibition against street trading; and
 - (b) if the street trading is restricted -
 - (i) the boundaries of the area or stand set aside for street trading;
 - (ii) the hours when street trading is restricted or prohibited;
 - (iii) the goods or services in respect of which street trading is restricted or prohibited; and
 - (c) that the area has been let or otherwise allocated, and the sign shall serve as sufficient notice to a street trader that street trading is restricted or prohibited in the area concerned.
- (3) The Council may, from time to time, amend the sign.
- (4) A person who carries on the business as street trader in contravention of the notice contemplated in subsection (2) commits an offence.

6. Places where street trading is prohibited

- (1) No person may, unless the Council has so permitted-
 - (a) in terms of an agreement; or
 - (b) by means of the display of a sign,carry on the business of a street trader in any of the following places:
 - (i) in a garden or a park to which the public has a right of access;
 - (ii) on a verge contiguous to-
 - (aa) a building belonging to, or occupied solely by, the State or the Council;
 - (bb) a church or other place of worship;

- (cc) a building declared to be a public monument under the National Heritage Resources Act, 1999 (Act No. 25 of 1999).
- (2) No person may carry on the business of a street trader in any of the following places:
- (a) In an area declared by the Council in terms of section 6A(2)(a)^{*2} of the Act as an area in which street trading is prohibited;
 - (b) at a place where it obstruct the use of the side walk by pedestrians or interferes with the ability of persons using the side walk to view the goods displayed behind a shop display window or obscure such goods from view.
 - (c) within 5 metres of an intersection as defined in Regulation 322 of National Road Traffic Act, 1996 (Act No. 93 of 1996);
 - (d) at the place where it obstructs -
 - (aa) a fire hydrant;
 - (bb) the entrance to or exist from the building;
 - (cc) vehicular traffic;
 - (dd) access to pedestrian crossings, parking or loading bays or other facilities for vehicular or pedestrian traffic;
 - (ee) access to or the use of the street furniture and other facilities designed for the use of the general public;
 - (ff) or obscures a road traffic sign that is displayed in terms of the National Road Traffic Act, 1996;
 - (gg) or obscures a marking, notice or sign displayed or made in terms of these By-laws;
 - (e) that half of a public road contiguous to a building which is used for residential purposes, if the owner or person who is in control or any occupier of the building objects thereto;

^{*2} "A local authority may, subject to the provisions of paragraphs (b) up to and including (j), by resolution declare any place in its area of jurisdiction to be an area in which the carrying on of the business of street vendor, pedlar or hawker may be restricted or prohibited."

- (f) on a portion of sidewalk or public place in contravention of a notice or sign erected or displayed by the Council for the purposes of these By-laws;
- (3) A person to whom an area or stand has been leased or allocated in terms of paragraphs 6A(3)(b) and (c) of the Act^{*3} must -
 - (a) comply with conditions of the lease of allocation; and
 - (b) be in possession of written proof that Council has leased or allocated the area or stand to him or her,and such a person may not carry on the business of street trader in the area or stand if he or she does not comply with paragraphs (a) and (b).
- (4) A person who contravenes one or more of the provisions of this section commits an offence.

7. Duties of street trader

- (1) A street trader must-
 - (a) when he or she concludes business for the day, remove his or her property, except any structure permitted by the council, to a place which is not part of a public road or public place;
 - (b) when requested by an official of the Council or a by a person who has been authorized to provide municipal services, move his or her property so as to permit the official or other person to carry out any work in relation to a public road, public place or service;
 - (c) keep the area or stand occupied by him or her in a clean and sanitary condition;
 - (d) ensure that the area is free of litter, and must, when he or she concludes business for the day, dispose of litter generated by his or her business-

*3` Notwithstanding the provisions of any other law. A local authority may-

- (a)
- (b) (i) set apart by resolution and demarcate stands on areas for the purposes of the carrying on the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the local authority or on any other property in the occupation and under the control of the local authority; and
- (ii) in like manner extend, reduce or disestablish any such stand or area;
- (c) by agreement let or otherwise allocate any stand or area demarcated under paragraph (b)(i) or otherwise established for such purposes.

- (i) at the dumping sites of the Council; or
 - (ii) in receptacles provided by the Council for the public;
 - (e) on request by an official of the Council, move his or her property so as to permit the cleansing of the area where he or she is trading;
 - (f) regarding the size and location of the area or stand occupied by him or her; must-
 - (i) ensure that the area which he or she uses does not exceed 6m² in size and not exceed 3 metres in length;
 - (ii) ensure that a space of not less than 1,5 metres is left between the wall of the shop (contiguous to which he or she conducts his or her business) and himself or herself; and
 - (iii) leave a space of not less than 0,5 metre from the kerb of the roadway.
- (2) A person who contravenes one or more of the provisions of subsection (1) commits an offence.

8. Prohibited conduct

- (1) A street trader -
- (a) may not sleep overnight at the area where he or she is trading, or at the area where another street trader is trading;
 - (b) may not place or stack his or her property in such a manner that it-
 - (i) constitutes a danger to any person or property; or
 - (ii) is likely to injure any person or cause damage to any property;
 - (c) may not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
 - (d) may not lease onto a public road or public place or into a storm water drain of fat, oil or grease in the course of conducting his or her business;

- (e) may not allow smoke, fumes, noise, smells, or other substance arising from his or her activities to cause a nuisance or pollution of any kind;
- (f) may not erect a structure for the purposes of providing shelter;
- (g) may not place his or her property on a public road or public place;
- (h) who conducts his or her business from a vehicle, may not park the vehicle or trader in such a manner so as to obstruct pedestrian or vehicular traffic and must ensure that he or she complies with the provisions of the National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (i) may not use an area which exceeds 6m squared, with a maximum length 3 metres;
- (j) may not place, on a public road or public place, his or her property that cannot be easily removed to a place of safety, which may not be a public road or public place, at the end of the day's business;
- (k) may not display his 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;
- (l) may not attach an object by any means to a building, structure, sidewalk, tree, parking meter, lamp, pole , electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or a public road or public place;
- (m) may not carry on his or her business in such a manner as to -
 - (i) create a nuisance;
 - (ii) damage or deface the surface of a public road or public place or public or private property; or
 - (iii) create a traffic or health hazard;
- (n) may not make an open fire that poses a health or environment hazard to any person or property or to street furniture;
- (o) may not, other than in a refuse receptacle approved or supplied by the Council, accumulate, dump, store or deposit(or cause or permit this to be done) any litter on-

- (i) any land or premises; or
 - (ii) any public road or public place or;
 - (iii) any public or private property
 - (p) may not store his or her property in a manhole, storm water drain, public toilet, and bus shelter or in a tree;
 - (q) 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.
- (2) A person who contravenes one or more of the provisions of subsection (1) commits an offence.

9. Removal and impoundment

- (1) An official-
- (a) if he or she reasonably suspects that property is being used or intended to be used in or in connection with street trading, and
 - (b) whether or not the property is in possession or under the control of any person, may-
 - (i) remove and impound the property which he or she finds at a place where street trading is restricted or prohibition; and
 - (ii) impound the property.
- (2) An official who acts in terms of subsection(1) must, except in the case of goods that have been left or abandoned, issue to the street trader a receipt for the property so removed and impounded and the receipt must contain the following particulars:
- (a) The address where the impounded property will be kept and the period thereof;
 - (b) the conditions for the release of the impounded property; and
 - (c) that unclaimed property will be sold by public auction.
- (3) If any impounded property is attached to immovable property or a structure, and the impounded property is under the apparent control of a person present at that place, an official may order the person to remove the impounded property.

- (4) When a person fails to comply with an order to remove the impounded property, an authorized official may take such steps as may be necessary to remove the impounded property.
- (5) Council is not liable for any loss of or damage to any property removed and impounded in terms of these By-laws.
- (6) A person who hinders or obstructs an official in the performance of his or her duties under this section, or who refuses or fails to remove the object when ordered to do so by an official, commits an offence.

CHAPTER 2: SPECIFIC PROVISIONS APPLICABLE TO STREET TRADING IN MEALS OR PERISHABLE FOODSTUFFS

10. Applicable provisions

The provisions in this Chapter, in addition to the provisions in Chapter 1 and 3 of these By-laws and the provisions of the Business Act, 1991 (Act No. 71 of 1991) and any other applicable law, apply to street traders who sell meals or perishable foodstuffs.

11. Hawker's licence

- (1) No person, whether as principal, employee or agent may, unless the business is covered by a hawker's licence issued by the Council, carry on the business of selling any foodstuff in the form of meals or any perishable foodstuff-
 - (a) which is conveyed from place to place, whether by vehicle or otherwise;
 - (b) on a public road or at any other place accessible to the public; or
 - (c) in, or from a movable structure or stationary vehicle,
- (2) A person contemplated in (1) who wishes to obtain a hawker's licence must apply on the prescribed application form contained in Schedule 1, and submit the completed form at the office of the Municipal Manager.
- (3) After consideration of an application for a licence, the Council may-
 - (a) grant the licence if any apparatus, equipment, storage space, working surface, structure, vehicle, conveyances or other article or place used for or in connection with the preparation, handling

or sale of foodstuffs comply with the requirements of sections 2 to 5 inclusive of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) and regulations made under section 34 to 27 inclusive of the Health Act, 1977 (Act No. 63 of 1977);

- (b) issue the licence subject to any condition^{*4} therein specified in terms of which the licence holder must, in connection with the business premises or any such apparatus, equipment, storage, space, working surface, structure, vehicle, conveyance, article or place comply, or within a specified period comply, with a specific requirement relating to town planning or the safety or health of the public of a law or regulations contemplated in subsection (3)(a) which apply to those premises.
- (4) Subject to section 2(10) of the Act^{*5}, the Council may refuse to issue a licence if-
- (a) any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law or regulations contemplated in subsection(3)(a) relating to the health of the public;
 - (b) any foodstuff sold by the licence holder does not comply with a requirement of a law or regulations contemplated in subsection (3)(a) a law relating to the health of the public; or
 - (c) a licence of which the applicant was the holder, was at any time during the preceding 12 months, withdrawn due to non-compliance with a requirement under subsection (3).

*4 "Section 2(10) of the Act provides as follows: "when a licensing authority decides to refuse an application for a licence, or to grant such an application subject to a condition contemplated in subsection 6(a), or to issue a licence subject to a condition, or to amend or impose a condition under subsection (8), or to withdraw or suspend a licence, it shall as soon as practicable-

- (a) notify the applicant or licence holder concerned in writing of its decision;
- (b) furnish the applicant or licence holder concerned in writing with the reasons for its decision;
- (c) inform the applicant of licence holder concerned in writing of his right to appeal under section 3."

*5 See footnote 4.

- (5) The Council may at any time, after giving the licence holder a reasonable opportunity to be heard -
- (a) withdraw or suspend licence on the ground that-
 - (i) any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law or regulations contemplated in subsection (3)(a) relating to the health of the public;
 - (ii) any foodstuff sold by the licence holder does not comply with a requirement of a law or regulations contemplated in subsection (3)(a) relating to the health of the public;
 - (iii) the person did not comply with a condition imposed by the Council in terms of subsection (3)(b).
 - (b) if it considers it necessary on the ground of changed circumstances in relation to a business or the premises, by way of endorsement on the licence amend a condition or impose a condition, and-
 - (i) may for these purposes require a licence holder in writing to produce his or her licence; and
 - (ii) must act in terms of section (2)10 of the Act.
- (6) A person who contravenes subsection (1) or a condition contemplated in this section or who fails to comply with requirement contemplated in this section, commits an offence.

CHAPTER 3: MISCELLANEOUS PROVISIONS

12. Notice of contravention

- (1) The Council may serve a notice of contravention on a person who has committed an offence in terms of these By-laws.

- (2) A notice of contravention must-
- (a) specify, at the time when the notice is issued, the name and residential and postal address, if either or both of these be known, of the person on whom the notice is served
 - (b) state the particulars of the contravention;
 - (c) specify the amount of the penalty payable in respect of that contravention and the place where the penalty may be paid; and
 - (d) inform the person that he or she must-
 - (i) within 28 calendar days of the date of service of the notice, pay the penalty; or
 - (ii) within 7 calendar days of the notice, inform Council in writing that he or she elects to be tried in court on a charge of having committed an offence.

13. Penalty

A person who contravenes any provision or fails to comply with any provision of this by-law commits an offence and shall on conviction be liable to-

- (a) a fine or imprisonment, or either such fine or imprisonment or to both such fine and imprisonment; and
- (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued; and
- (c) a further amount equal to any costs and expenses found by the court to have been incurred by Council as result of such contravention or failure.

14. Responsible person

When an employee of a person who trades ("the employer") performs an act which contravenes a provision of these By-laws, the employer is deemed to have committed the contravention himself or herself, unless he or she proves to the satisfaction of the court that -

- (a) he or she did not permit such act;

- (b) he or she took all reasonable steps to prevent the performance of the act, however the fact that he or she issued instructions forbidding an act, is not sufficient proof that he took all reasonable steps to prevent the performance of the act; and
- (c) it was not in the scope of the authority or the course of employment of the employee to perform an act which contravenes these By-laws.

15. Repeal

By-laws on street trading previously made by the Council or its constituent Predecessors in respect of any portion of the area of the Makhado Municipality, are hereby repealed in so far as they are inconsistent with the provisions of these By-laws.

SCHEDULE 1

(Section 11(2))

**APPLICATION: HAWKERS'S LICENCE FOR STREET TRADING IN MEALS
AND PERISHABLE FOODSTUFFS**

A person who wants to obtain a hawker's licence to hawk, sell or pedal meals or foodstuffs as a street trader, must supply the following information:

NAME:

IDENTITY NUMBER:

ADDRESS:

.....

.....

CONTACT NUMBERS (e.g. telephone):

AREA/S IN WHICH YOU WANT TO TRADE:

.....

.....

DESCRIBE THE FOOD THAT YOU WANT TO TRADE IN:

.....

.....

DESCRIBE ALL EQUIPMENT THAT YOU ARE GOING TO USE:

.....

.....

.....

DESCRIBE THE SHELTER, STRUCTURE OR FROM WHICH YOU ARE GOING
TO TRADE:

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