

MBOMBELA LOCAL MUNICIPALITY: STREET TRADING BY-LAWS

In terms of and under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Mbombela Municipality enacts as follows:-

Table of Contents

1. Definitions
2. Principles and objectives
3. Application

CHAPTER 1: GENERAL PROVISIONS APPLICABLE TO STREET TRADING

4. Declaration of restricted street trading areas
5. Procedure for declaring a restricted area
6. Places where street trading is prohibited
7. Duties of street trader
8. Prohibited conduct
9. Removal and impoundment
10. Confiscated goods register
11. Disposal of impounded goods
12. Sale of impounded goods
13. Municipal employees and councillors may not purchase impounded goods
14. Newspaper vendors

CHAPTER 2: MISCELLANEOUS PROVISIONS

15. Penalty
16. Responsibility of persons employing street traders
17. Indemnity
18. Appeal
19. Liaison forums in community
20. Revocation of by-laws
21. Short title and commencement

SCHEDULE 1: Confiscated Goods Register Information

1. Definitions

(1) In this by-law, unless the context otherwise indicates –

“**Act**” means the Businesses Act, 1991 (Act 71 of 1991), and includes the regulations promulgated under the Act;

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

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

“**goods**” means any movable property and includes a living thing;

“**intersection**” means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act 93 of 1996);

“**litter**” means any object or matter which is discarded by a person in any place except in an approved receptacle provided for that purpose or at a waste disposal or processing facility;

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

“**municipality**” means –

- (a) the Mbombela Municipality, and includes any political structure, political office bearer, councilor, duly authorised agent thereof or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councilor, agent or employee; or
- (b) service provider fulfilling a responsibility under this by-law, assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000, or any other law as the case may be;

“**municipal manager**” is the person appointed by the municipality in terms of Section 82 of the Municipal Structures Act, 1998 and includes any person:

- (a) acting in such position; and
- (b) to whom the municipal manager has delegated any power, function or responsibility in as far as it concerns the execution of those powers, functions or duties.

“**nuisance**” means any act, omission or condition which is offensive or dangerous, or which materially interferes with the ordinary comfort, convenience, peace or quiet of other people or which affects, or may affect, the safety of the public;

“**official**” means a designated officer who is authorized by the municipality to perform and exercise any or all of the functions and powers contemplated in this by-law;

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

“**perishable foodstuffs**” mean perishable foodstuffs declared as such in the Perishable Foodstuffs Regulations published under Government Notice R1183 in Government Gazette 12497 of 1 June 1990 (as amended) in terms of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of

1972 and which includes meat, milk, fish, fish spawn, molluscs, crustaceans, fruit, vegetables and bread;

"**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 municipality 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 amenity**" means –

- (a) any land, square, camping site, caravan park, beach, swimming pool, public open space, public resort, recreation site, river, dam, nature reserve, zoo-logical, botanical or other garden, or hiking trail, including any portion thereof and any facility or apparatus therein or thereon, which is the property of, or is possessed, controlled or leased by the municipality and to which the general public has access, whether on payment of admission of fees or not, but excluding a public road or street;
- (b) a building, structure, hall room or office, including any part thereof or any facility or apparatus therein, which is the property of, or is possessed, controlled or leased by the municipality and to which the general public has access, whether on payment of admission of fees or not; and
- (c) a public amenity contemplated in paragraphs (a) and (b) if it is lawfully controlled or managed in terms of an agreement between a person and the municipality;

"**public road**" means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes-

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

"**roadway**" means a roadway as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

"**Road Traffic Regulations**" means the Road Traffic Regulations published under GN R225 in GG 20963 of 17 March 2000 in terms of the National Road Traffic Act, 1996 (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, 1996 (Act 93 of 1996);

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

“**street trader**” means any person carrying on business, whether as principal, employee or agent, by selling, supplying or offering any goods or the supplying or offering to supply any service for reward, in or from a public road or public place in the municipality, but excludes a newspaper vendor;

“**street trading**” means the carrying on of the business as a street trader;

“**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 Businesses Act, 1991, (Act 71 of 1991) have a corresponding meaning in this by-law.

(2) A single act of selling or offering or rendering of services in a public road or public amenity constitutes 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

(1) The Municipality, acting in terms of section 6A(1)(a)(i) of the Businesses Act, 1991 (Act 71 of 1991), and –

- (a) having regard to the principles set out in the Act and in the Constitution;
- (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, healthy and safe environment,

in this by-law provides mechanisms, procedures and rules to manage street trading.

(2) In the development and management of its obligations and the implementation of this by-law, the municipality also recognises the infrastructural, social and economical disparities and inequalities resulting from previous local government dispensations and shall strive to overcome such disparities and inequalities by supporting the new goals for local government as determined in section 152 of the Constitution.

(3) In the implementation and enforcement of this by-law, the municipality may take into consideration the realities of the Mbombela area, the different customs, cultures, circumstances, geographical areas, kinds of premises levels of development and conventions and the municipality may use the devices provided for in this by-law, including the application of different norms, standards and guidelines, the granting of exemptions and the utilisation of liaison forums.

3. Application

- (1) No person may conduct the business of a street trader without the written permission of the municipality.
- (2) The municipality may impose conditions when issuing a street trading permit and the municipality may indicate the area and time for which the permit is valid.
- (3) The municipality may suspend the validity of a street trading permit in a specific area or of street trading permits in general when a special event takes place, provided that the municipality shall post written notices to this effect on its notice boards and provided further that, where possible, written notices shall be served on individual street traders in the affected areas.
- (4) The municipality may refuse to renew a permit if there are any fines outstanding.
- (5) Permits issued in terms of this by-law must at all times be kept on the person of the street trader to whom it had been issued.
- (6) Any permit issued in terms of this by-law must be produced to an official who calls for it.
- (7) This by-law applies to all persons who carry on the business of street trading within the area of jurisdiction of the Mbombela Municipality.
- (8) A person who contravenes a provision of this section commits an offence.

CHAPTER 1: GENERAL PROVISIONS APPLICABLE TO STREET TRADING

4. Declaration of restricted street trading areas

- (1) The Council may declare any area in which trading is restricted.
- (2) No person may trade in a restricted area:-
 - (a) unless such person is in possession of:-
 - (i) a valid permit in terms of which a bay in a street has been allocated, or
 - (ii) a lease agreement with the Council or similar authority issued by the Council in respect of municipal land, or
 - (b) in contravention of the conditions of a permit.
- (3) A person who contravenes a provision of this section commits an offence.

5. Procedure for declaring a restricted area

- (1) Whenever the Municipality has reason to believe that the number of traders in a specific area have assumed, or have the potential to assume, such proportions that the need has arisen or may arise that trading in such area should be restricted, the Municipality may cause an investigation to be launched into the feasibility of such restriction.

- (2) An investigation into the feasibility of restricting trading, shall address the following:-
- (a) whether the number of traders and in the area have, or may have the potential to negatively affect -
 - (i) the established businesses, residences, tourist potential and accessibility of shoppers to the area;
 - (ii) the movement of traffic and/or pedestrians in the area, and
 - (iii) present or future planning and development of the area,
 - (b) whether more effective supervision or control of the area, will make a declaration unnecessary;
 - (c) whether the intended restriction will drive out of business a substantial number of traders;
 - (d) the various options open to the Municipality, whether or not such an area is declared restricted;
 - (e) the preparation of a plan showing:-
 - (i) the position of the area concerned;
 - (ii) if restricted, the number of traders to be allowed in such area, and
 - (iii) locations where traders may be allowed, and
 - (iv) if restricted, the criteria to be used for the allocation of bays;
 - (f) whether any traders belong to associations, and, if so, the names, membership and area of influence of such associations;
 - (g) any other information which may have an influence in the consideration of the declaration of such area,
 - (h) the views of the association/s concerned.
- (3) If the Municipality, after considering the findings of the investigation, finds a need to restrict the area, it shall instruct the municipal manager to enter into a process of public participation and advise the Municipality of the outcome thereof.
- (4) The Municipality shall consider the representations of the association/s concerned, as well as every objection submitted to the municipal manager and the comments of the municipal manager thereon, and will thereafter resolve on the declaration of the area concerned, as well as the criteria in terms of which permits for bays will be considered.
- (5) The declaration must be published in the Provincial Gazette and shall take effect on the date of such publication.
- (6) Copies of the notice of declaration referred to in sub-section (5), must be posted at selected municipal offices.

6. Places where street trading is prohibited

(1) Unless the municipality has so permitted in terms of an agreement or by means of the display of a sign, no person may carry on the business of a street trader in any of the following places:

- (a) In a garden or a park to which the public has a right of access; or
- (b) on a verge contiguous to –
 - (i) a building belonging to, or occupied solely by the State or the municipality;
 - (ii) a church or other place of worship; or
 - (iii) a building declared to be a public monument under the National Heritage Resources Act, 1999.

(2) No person may carry on the business of a street trader in any of the following places:

- (a) in a place declared by the municipality under section 6A(2)(a) of the Act as a place in which street trading is prohibited;
- (b) at a place where street trading obstructs the use of the sidewalk by pedestrians or interferes with the ability of persons using the sidewalk to view the goods displayed behind a shop display window or obscures such goods from view.
- (c) within 5 metres of an intersection as defined in Regulation 322 of the National Road Traffic Regulations;
- (d) at a place where street trading obstructs –
 - (i) a fire hydrant;
 - (ii) the entrance to, or exit from, a building;
 - (iii) vehicular traffic;
 - (iv) access to a pedestrian crossing, a parking or loading bay or any other facility for vehicular or pedestrian traffic;
 - (v) access to, or the use, of street furniture or any other facility designed for the use of the general public;
- (e) at a place where street trading obscures -
 - (i) a road traffic sign that is displayed in terms of the National Road Traffic Act, 1996;
 - (ii) or impedes the view of any road user; or
 - (iii) a marking, notice or sign displayed or made in terms of this by-law;
- (f) on 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;

- (g) on a portion of a sidewalk or public amenity in contravention of a notice or sign erected or displayed by the municipality for the purposes of this by-law;
 - (h) within ten meters (10m) of the entrance to a financial institution or electronic banking facility; or
 - (i) where it leaves less than 2 metres of width of a sidewalk clear for pedestrian use.
- (3) A person to whom an area or stand has been let or allocated under paragraph (c) of section 6A(3) of the Act^a –
- (a) must comply with the conditions of the lease of allocation;
 - (b) must be in possession of written proof that the municipality has let or allocated the area or stand to him or her; and
 - (c) may not transfer any written proof that municipality has let or allocated the area or stand to him or her
- (4) No person may purchase or offer to purchase from a street trader any goods or service, including casual labour services, in or at a place where street trading is prohibited.
- (5) Any person who contravenes a provision 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 if stored in any structure approved and permitted by the municipality, to a place which is not part of a public road or public amenity;
 - (b) when requested by an official of the municipality 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 amenity 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 at all times, and must, when he or she concludes business for the day, dispose of litter generated by his or her business in receptacles provided by the municipality for the public;

^a These include instances where the municipality:

- (a) leases any verge to the owner or occupier of the contiguous land on the condition that such owner or occupier shall admit a specified number of street vendors, pedlars or hawkers in stands or places on such verge designated by such owner or occupier; or
- (b) set apart by resolution and demarcated stands or areas for the purposes of the carrying on of the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the local authority; and
- (c) by agreement let or otherwise allocate any stand or area.

- (e) on request by an official of the municipality, 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, –
 - (i) ensure that the area which he or she uses does not exceed 6 m² 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 2 metres from the kerb of the roadway.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

8. Prohibited conduct

- (1) A street trader –
- (a) may not sleep or 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 release onto a public road or public amenity or into a storm water drain any 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 purpose of providing shelter, except for a temporary structure to provide shelter against the weather in which case the said shelter must be removed at the end of the day's business, provided that prior written approval to erect a structure must be obtained from the municipality and the municipality may prescribe the materials that may be used;
 - (g) may not place his or her property on the surface of a public road or in a public amenity;
 - (h) who conducts his or her business from a vehicle, may not park the vehicle or trailer in such a manner 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;

- (i) may not display his or her goods 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;
 - (j) 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 on a public road or public amenity;
 - (k) 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 amenity or public or private property; or
 - (iii) create a traffic hazard;
 - (l) may not make an open fire that poses a health or environment hazard to any person or property or to street furniture;
 - (m) may not, other than in a refuse receptacle approved or supplied by the municipality, accumulate, dump, store or deposit any litter on –
 - (i) any land or premises;
 - (ii) any public road or public amenity or;
 - (iii) any public or private property;
 - (n) may not store his or her property in a manhole, storm water drain, public toilet, bus shelter, on the median between traffic lanes or in a tree;
 - (o) may not carry on such business in a place or area in contravention of any prohibition or restriction approved by the municipality in terms of section 6A(2)(a) of the Act;
 - (p) may not trade in front of a formal business in goods that are similar to any goods offered for sale by such formal trader;
 - (q) may not allow children under the age of sixteen to accompany him or her trade on his or her behalf where they will be operating on a public road;
 - (r) may not trade from door-to-door in any business centre as indicated in the municipality's zoning scheme; and
 - (s) may not cause a nuisance by insisting, begging or intimidating any person to purchase goods.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

9. Removal and impoundment

- (1) An official may remove and impound any goods that a trader failed or refused to remove from a place after having been requested to do so by the authorised official, or which had been left there or abandoned-
 - (a) which the authorised official reasonably suspects are used in connection with street trading; or
 - (b) which is found at a place where the business of street trading is restricted in terms of this by-law and which is likely to constitute a contravention of any provision of this by-law.
- (2) An official acting in terms of subsection (1) must-
 - (a) except in the case of goods that have been left or abandoned, issue to a trader a receipt for any goods so removed and impounded,
 - (b) without delay deliver such goods to a place determined by the municipality.
- (3) The owner of goods removed and impounded in terms of subsection (1) shall, subject to the provisions of section 11, be liable for any expenses incurred by the municipality and the municipality may keep such goods until all such expenses have been paid or deal with the goods as contemplated in section 11.
- (4) A certificate issued under the hand of the municipal manager shall be deemed to be proof of any expenses incurred by the municipality.
- (5) 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.

10. Confiscated goods register

The Municipality must –

- (a) maintain a register containing the information contemplated in Schedule 1, which must be available for public inspection at all reasonable times; and
- (b) complete the confiscated goods register immediately upon the acceptance into the place of safekeeping and storage set aside for this purpose.

11. Disposal of impounded goods

- (1) Any perishable goods impounded in terms of section 9(1) may at any time be sold, destroyed or otherwise disposed of in terms of any policy of the municipality within a reasonable time after its impoundment by the municipal manager, and the proceeds of a sale, less any expenses incurred by the municipal manager, shall, upon presentation of the receipt contemplated by section 9(2), be paid to the owner; provided that if such proceeds are not claimed within three

months of the date on which the goods concerned were sold, the proceeds shall be forfeited to the municipality.

(2) The owner of goods impounded in terms of section 9(1), may, in the case where the goods were not destroyed or sold in terms of subsection (1), on production of the receipt contemplated by section 9(2), reclaim the goods; provided that if the goods remain unclaimed after three months, the municipal manager shall have the right to sell the goods and the proceeds shall be forfeited to the municipality.

(3) When goods are reclaimed in terms of subsection (2), any outstanding expenses incurred by the municipality in connection with the removal and impoundment, must first be paid before the goods may be returned.

(4) In the event of the proceeds of any sale of goods contemplated by this by-law not being sufficient to defray the expenses incurred by the municipality, the owner of such goods will remain liable for so much of such expenses as is not defrayed by the proceeds from the sale of such goods.

12. Sale of impounded goods

(1) If the owner of impounded goods, excluding perishable foodstuffs, fails to claim such goods and pay the prescribed fees as determined by the municipality from time to time within **3 months** of the impoundment of the goods, the municipality must –

(a) apply to the Court for authority to sell the goods; and

(b) in the application contemplated in paragraph (a), provide the Court with proof that a statement as contemplated in sub-section (2) was lodged with the owner.

(2) The statement contemplated in subsection (1)(b) must include the fees and costs due in terms of this by-law.

(3) The Court, whether the amounts set forth in the statement contemplated in subsection (1)(b) are disputed or not, must –

(a) summarily enquire into the matter;

(b) enquire whether notice was given to the owner of the goods by the municipality; and

(c) make such order as it considers just and equitable, including an order –

(i) as to costs; and

(ii) on the process to be followed by the municipality in the sale of the confiscated goods.

13. Municipal employees and councillors may not purchase impounded goods

Employees and councillors of the municipality, or a family member, or a close associate of any municipal employee or councillor, may not purchase any goods offered for sale in terms of this by-law, either personally or through any other person, directly or indirectly.

14. Newspaper vendors

- (1) Any publisher of a newspaper that sells such newspaper by using vendors in or on a road must enter into an agreement with the municipality regarding the areas where and times during which such sales may be undertaken.
- (2) The municipality may determine the hours during which the sale of newspapers in terms of subsection (1) may be undertaken.
- (3) The municipality may levy a tariff for the sale of newspapers in or on any road within its area of jurisdiction.
- (4) Any publisher or vendor that contravenes the provisions of this section commits an offence.

CHAPTER 2: MISCELLANEOUS PROVISIONS

15. Penalty

A person who has committed an offence in terms of this by-law is, on conviction, and subject to penalties prescribed in any other law, liable to a fine.

16. Responsibility of persons employing street traders

When an employee of a person who performs an act which contravenes a provision of this by-law, the employer is deemed to have committed the contravention him- or herself, unless he or she proves 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; 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 this by-law.

17. Indemnity

The municipality will not be liable for any loss or damage suffered arising from the impoundment of any goods in terms of this by-law.

18. Appeal

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

19. Liaison forums in community

- (1) The municipality may establish one or more liaison forums in a community for the purposes of –
 - (a) creating conditions for a local community to participate in the affairs of the municipality; and
 - (b) promoting economic development.
- (2) A liaison forum may consist of –
 - (a) a member or members of an interest group, or an affected person;
 - (b) a member or members of a ward committee in whose immediate area street trading is conducted;
 - (c) a designated official or officials of the municipality; and
 - (d) a councillor.
- (3)
 - (a) The municipality may, when considering an application for an approval, or exemption certificate in terms of this by-law, request the input of a liaison forum.
 - (b) A liaison forum or any person or persons contemplated in subsection (2) may, on own initiative submit input to the municipality for consideration.

20. Revocation of by-laws

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this by-law.

21. Short title and commencement

This by-law may be cited as the Mbombela Municipality Street Trading By-law and commences on the date of publication thereof in the Provincial Gazette.

SCHEDULE 1

Confiscated Goods Register Information

(Section 10)

A confiscated goods register must, at least, contain the following information –

1. Place where goods are kept
2. Date of receipt of goods
3. Number and description of goods
4. Name and address of person who seized the goods
5. Name and address of owner of goods
6. Name and address or description of place where goods were found
7. Distance between place where animal was seized and pound
8. Date of sale of goods
9. Proceeds of sale of goods
10. Name and address of purchaser
11. Excess amount (if any) paid to owner or municipality
12. Receipt number