

STREET TRADING BY- LAWS

The Municipal Manager hereby publishes in terms of The Municipal Systems Act, Act No. 32 of 2000, the by-laws as set forth hereafter, which have been approved by the Council in terms of Section 13 of the said Act. -

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1. INTERPRETATION

- (1) In these by-laws, except the context otherwise indicates: -
- (i) **“authorised official”** means an official of the Council authorised to implement the provisions of these by-laws;
 - (ii) **“Council”** means the Town Council of Nelspruit;
 - (iii) **“garden or park”** means a garden or park to which the public has a right of access;
 - (iv) **“goods”** means any movable displayed in a street by any person for the purpose of carrying out a sale, and this includes any article or receptacle but excluding poultry and livestock;
 - (v) **“litter”** includes any container or other matter which has been discarded, abandoned or left behind by a person trading or his customers;
 - (vi) **“national monument”** means a building or place declared to be a national monument under the National Monuments Act, 1969 (Act No. 28 of 1969);
 - (vii) **“prohibited area”** means any place declared under section 7 (2) of the Act by resolution of the Council to be an area in which street trading is prohibited;
 - (viii) **“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;
 - (ix) **“public building”** means a building occupied mainly by the State, Province of the Council;
 - (x) **“public place”** means a public place as defined in section 2 of the Local Government Ordinance, 1939 (Ordinance 17 of 1939);
 - (xi) **“public road”** means a public road as defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989);
 - (xii) **“restricted area”** means any place declared under section 7 (2) of the Act by resolution of the Council to be an area in which street trading may be restricted;
 - (xiii) **“roadway”** means a public road, excluding the sidewalk;
 - (xiv) **“sell”** includes supply to and also: -
 - (a) exchange or hire;
 - (b) Store, expose, offer or prepare for sale;And **“sale”** has a corresponding meaning;
 - (xv) **“services”** includes any advantage or gain for consideration or reward;
 - (xvi) **“sidewalk”** means a sidewalk as defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989);

- (xvii) "the Act" means the Mpumalanga Business Act, 1996 (Act No. 2 of 1996)
 - (xviii) "trade" means to sell goods or services in a public road or public place, and "trading" and "street trading" has a corresponding meaning;
 - (xix) "verge" means a verge as defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989), and any word or expression to which a meaning has been assigned in the Mpumalanga Business Act, 1996 (Act No. 2 of 1996);
- (2) For the purposes of these by-laws a single act of selling or providing a service in a public road or public place shall constitute trading.
 - (3) For the purpose of these by-laws, any word or expression as defined in of the Act shall have a corresponding meaning where used in these by-laws.

2. FREEDOM TO TRADE

Subject to the provisions of section 3 and 4 and any other act, street trading is freely permitted except in so far as such trading is restricted or prohibited by sections 6 to 13 inclusive and sections 15 and 16.

3. APPLICATION TO LEASE A STAND

- (1) Any person who intends to carry on a business shall, on the prescribed form (Annexure A) apply to the Council for the lease or allocation of a stand.
- (2) If such application is successful: -
 - (a) the applicant shall, in respect of such stand, enter into a lease agreement with the Council at such rental as determined by the Council from time to time;
 - (b) a token shall be issued to the applicant (hereinafter referred to as the "street vendor") as proof of the person's right to occupy such stand for the purpose of carrying on business as contemplated in sub-section 3 (2) (c);
 - (c) a street vendor shall, while selling on the stand, retain such token on his/her person ready for immediate production to any authorized officer who calls for it;
 - (d) the Local Authority may, at the written request of the street vendor, issue a token to one bona fide employee of the street vendor, and the provisions of sub-section 3 (2) shall be applicable to such employee "mutatis mutandis".
- (3) A person on who carries on the business of street vendor on a stand and who is unable to produce a token, as contemplated in sub-section 3 (2) (b), shall be guilty of an offence.

4. GENERAL CONDUCT

A person trading shall: -

- (a) not place his/her property on a verge of public place except for the purpose to trade;

- (b) ensure that his/her property does not cover an area of a public road or public place, which is greater in extent than three metres long and two metres wide, and if such person is a vendor of newspapers and/or magazines, he or she shall place such newspapers and/or magazines in an orderly pile neatly stacked.
- (c) not place or stack his/her property in such a manner that it constitutes a danger to any person or is likely to injure any person;
- (d) do not obstruct access to a fire hydrant;
- (e) on concluding business for the day, remove his/her property to a place which is not part of a public road or public place;
- (f) not display his/her goods or other property on a building or other private property, without the 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/her property so as to permit the carrying out of any work in relation on any such service or to a public road or public place;
- (h) not attach any object by any means to any building, structure, pavement, tree, parking metre, lamp post, electricity post, 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 cause an obstacle or nuisance or harm any person or damage a building or vehicle or any street furniture referred to in sub-section 4(h);
- (j) not store or place his/her property in a manhole or storm water drain; and
- (k) not display or allow to display any goods or property or trade in an area, which is exclusively established for the parking of vehicles.

5. CLEANLINESS

A person trading shall: -

- (a) keep the area or site occupied by him/her for the purpose of such business in a clean and sanitary condition;
- (b) keep his/her property in a clean and sanitary condition;
- (c) properly dispose of litter generated by his/her business;
- (d) not dispose of litter in a manhole, storm water 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/her for the purpose of trade is free of litter;
- (f) in the 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/her business and to prevent any smoke, fumes or odours emanating from his/her activities from becoming a nuisance;

- (g) on request by an employee or agent of the Council, move his/her property so as to permit the cleansing of the surface of the area or site where he/she is trading; and
- (h) prevent any smoke, fumes or other substance, odours and noise emanating from his/her activities that cause a nuisance or pollution of any kind

6. OBSTRUCTION OF PEDESTRIANS

No person shall trade at a place where: -

- (a) it obstructs access to or the use of street furniture such as a bus passenger bench or shelter or queuing line, refuse disposal bin or other facility intended for the use of the general public;
- (b) It obstructs the visibility of a display window in business premises, if the person carrying on business in the premises concerned objects thereto;
- (c) It obstructs access to an entrance to or exit from a building or automatic bank teller machine;
- (d) It obstructs access to a pedestrian crossing;
- (e) It obstructs access to any vehicle;
- (f) It leaves less than 2 metres in width of a sidewalk clear for pedestrian use; or
- (g) In any other manner obstructs pedestrians in their use of the sidewalk.

7. OBSTRUCTION OF VEHICULAR TRAFFIC

No person shall trade at a place where such trading: -

- (a) causes an obstruction on a roadway;
- (b) limits access to parking or loading bays or other facilities for vehicular traffic;
- (c) obscures any road traffic sign or any marking, notice or sign displayed or made in terms of these by-laws or other legislation;
- (d) interferes in any way with any vehicle that may be parked alongside such place; or
- (e) obscures or impedes the view of any road user.

8. TRADING RESTRICTED TO SPECIFIED HOURS IN CERTAIN PLACES

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 in Schedule A, outside the hours so specified in relation to each such garden, park, verge or area.

9. TRADING RESTRICTED TO SPECIFIED GOODS OR SERVICES IN CERTAIN PLACES

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 in Schedule B, other than in the goods or services so specified in relation to each such garden or park, verge and area.

10. TRADING RESTRICTED TO DEMARCATED STANDS OR AREA IN CERTAIN PLACES

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 in Schedule C, outside a stand or area set apart for trading purposes as contemplated in section 7-(3) (b) of the Act.

11. NO TRADING IN STANDS OR AREAS WHICH HAVE BEEN LET EXCEPT BY THE LESSEE

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 or she is not in possession of proof that he or she has hired such stand or area from the Council or that it has otherwise been allocated to him or her.

12. NO TRADING NEAR CERTAIN PUBLIC BUILDINGS, PLACES OF WORSHIP AND NATIONAL MONUMENTS

No person shall trade on a verge contiguous to any place of worship, national monument or public building which is specified in Schedule D.

13. NO TRADING IN PROHIBITED AREAS

No person shall trade in any prohibited area.

14. SIGNS INDICATING RESTRICTIONS AND AREAS

The Council may: -

- (a) by resolution after consultation with all interested parties, prescribe or make signs, markings or other devices indicating: -
 - (i) specified hours, places, goods or services in respect of which street trading is restricted;
 - (ii) the locations of 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.
- (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;

15. TRADING NEAR RESIDENTIAL BUILDINGS

No person shall, outside an area specified in Schedule E, trade in that half of a public road contiguous to a building used for residential purposes if: -

- (a) the owner, person in control or occupier of any part of the building facing onto such road has objected thereto; and
- (b) the fact that such objection was made has been made known to the first mentioned person by an authorised official.

16. TRADING NEAR CERTAIN BUSINESS PREMISES

No person shall trade on a verge contiguous to that part of a building in which business is being carried on by a person other than a department store or supermarket or other large supplier of many different lines of goods and who as one of his/her principal lines sells goods of the same nature as or of a similar nature to goods being sold by the first mentioned person without the consent of the last mentioned person.

17. REMOVAL AND IMPOUNDMENT

An authorised officer may remove and impound any goods, articles, receptacles, vehicles or structures, which he/she reasonably suspects is being used, or intended to be used, in or in connection with street trading which he/she finds at a place where street trading is restricted or prohibited in terms of section 4 to 16 inclusive and which in his/her opinion, constitutes an infringement of any such section.

18. OFFENCES

- (1) A street vendor who: -
- (a) places or stacks goods on a stand in such a manner that they constitute a danger to any other person or are likely to injure any person or damage any other goods or property;
 - (b) attaches any goods by any means to any building, structure, pavement, tree parking meter, lamp pole, electricity pole, telephone booth, post box, traffic sign or bench;
 - (c) makes a fire on or near any stand or at a place or in circumstances where it could harm any person or damage a building or vehicle;
 - (d) stores goods in a manhole or storm water drain or any other place not intended for the storage thereof;
 - (e) disposes of any litter in a manhole, storm water drain or any other place not intended for the disposal thereof;
 - (f) uses any vehicle. Trailer, container, shelter, tent not approved for use by the Council on a selling point in a prohibited / restricted area; or

- (g) contravenes any provision of these by-laws or fails to comply herewith or with any other conditions imposed in terms of these by-laws, shall be guilty of an offence.
- (2) Street vendor who fails to: -
- (a) keep their stand, including any goods used by them in carrying on a business, in a hygienic and neat condition;
 - (b) take all reasonably necessary precautions to prevent spilling any litter, including fat, oil and grease, on to a public road or prevent any smoke, fumes, odours or noise emanating from their stand becoming a nuisance; or
 - (c) arrange or move their goods at the request of an authorized officer or a person whose lawful duties include rendering of or in related to the supply of essential public services, so as to permit or facilitate the carrying out of such service, shall be guilty of an offence.
- (3) A person who trades on behalf of a street vendor on a stand and who is unable to produce a token contemplated in section 3 of these by-laws shall be guilty of an offence.

19. PENALTIES

Any person who is guilty of an offence in terms of these by-laws shall on conviction be liable to a maximum fine of R2000.00 or to imprisonment for a period not exceeding three months.

20. VICARIOUS LIABILITY OF PERSONS CARRYING ON BUSINESS

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/herself to have done or omitted to do that act, unless he/she satisfies the court that: -

- (a) he/she neither contemplated nor permitted the act or omission by the employee concerned;
- (b) he/she 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 instruction whereby an act or omission of that nature is prohibited shall not in itself be sufficient proof that he/she took all reasonable steps to prevent the act or omission.

21. VICARIOUS LIABILITY OF EMPLOYEES

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/she was the person carrying on the business concerned.

22. NAME OF BY-LAWS

These by-laws shall be known as the Street Trading By-laws.