**STREET TRADING BY-LAW**

Be it enacted by the Council of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Municipality, in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:

**ARRANGEMENT OF SECTIONS**

*Section*

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**Definitions**

**1.** In this By-law, unless inconsistent with the context –

**“the Act”** means the Business Act, 1991 (Act No. 71 of 1991) and includes the regulations promulgated thereunder,

"**approval**" means approval by an authorised official and "approve" has a corresponding meaning;

"**Authorised official**" means –

(a) any official of the Municipality who has been authorised by the Municipality to administer, implement or enforce the provisions of this By-law;

(b) a traffic officer appointed in terms of section 3A of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

(c) a member of the police service, as defined in terms of section 1 of the South African Police Services Act, 1995 (Act No. 68 of 1995); or

(d) a peace officer, contemplated in terms of section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)

**“Council”** means —

(a) the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Municipality, exercising its legislative and executive authority through its municipal council;

(b) its successor-in-title;

(c) a structure or person exercising a delegated power or carrying out an instruction, where any power in this By-law has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act; 2000 (Act No. 32 of 2000); and

(d) a service provider fulfilling a responsibility under this By-law;

"**demarcated stand**" means stand demarcated by Municipality for the purposes of street trading in terms of section 6(A)(3)(b) of the Act;

**“designated area”** means an area prescribed by the Council in terms of this By-law, subject to the Act, as the area in which informal trading can be conducted;

**“foodstuff”** means any article or substance, except a drug as defined in the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), ordinarily eaten or drunk by persons or purporting to be suitable to be sold for human consumption and includes any part or ingredient or substance used or intended or destined to be used as a part or ingredient of any such article or substance, as defined in section 1 of the Foodstuff Cosmetics and Disinfectants Act, 1972 (Act No.54 of 1972).

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

"**goods**" means any movable property used in connection with street trading and, without limiting the generality of the foregoing, includes products for sale, display tables, stands, receptacles, vehicles, structures or animals;

**“impoundment costs”** means all those costs incurred by the Council in respect of impounding and storing of impounded goods or property and, where applicable, costs incurred in respect of disposal of impoundment goods;

**“informal trader”** means the selling of goods and/or services by an informal trader in the designated area, which includes, without any limitation, the forms of trading included in this By-law;

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

**“kerb line”** means, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), the boundary between the shoulder and the verge or, in the absence of a shoulder, the part between the edge of the roadway and the verge;

**“linear market”** means a designated area located in a pedestrian environment.

**“litter”** includes any receptacle, container or other matter, which has been discarded, abandoned or left behind by an informal trader or by his or her customers;

**“motor vehicle”** means any self-propelled vehicle as more fully defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“**municipality**”means the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Municipality established in terms of section 155(6) of the Constitution of the Republic of South Africa, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998),

**“periodic markets”** means sale of legal goods and or services by individuals and or groups in locations designated for informal trading for a period no longer than 5 days;

**“prescribed”** means as determined by resolution of the Council from time to time;

**“property”** in relation to an informal trader, includes any article, goods container, motor vehicle or structure used or intended to be used in connection with informal trading;

**“public building”** means a building belonging to or occupied solely by any sphere of the government, including the Council;

**“public monument”** means any one of the public monuments and memorials as defined in terms of section 2 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999);

"**public place**" means any square, park, recreation ground or open space which is vested in the Council or to which the public has the right to use or is shown on a general plan of a township filed in the deeds registry or Surveyor-General’s office and has been provided for the use of the public or the owners of erven in such township;

"**public road**" means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), and is any road, street or thoroughfare or any place commonly used by the public or any section thereof or to which the public or any section thereof has the right of access;

**“rental”** means an amount payable by the informal trader for the allocated trading space in the designated area as agreed between the Council and an informal trader;

"**roadway**" means a roadway as defined in section 1 of the National Road Traffic Act, 1996, (Act No. 93 of 1996), but excludes a public place;

**“sell”** includes –

(a) barter, exchange or hire out;

(b) display, expose, offer or prepare for sale;

(c) store on a public road or public place with a view to sell; or

(d) 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 No. 93 of 1996;

**“shoulder”** means, as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996) that portion of the road, street or thoroughfare between the edge of the roadway and kerb line;

**“special events”** means special events that occur from time to time, including without limitation, sports events, religious events, social, cultural or political gatherings and music festivals;

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

"**street trader**" means a person who sells, barters, exchanges, hires out, displays, exposes, offers or prepares for sale, barter, exchange or hire any goods or who provides or offers any service for reward as a street vendor, hawker or pedlar in a public road or in a public place, but does not include any person who sells newspapers only;

**“the Traffic Act”** means the National Road Traffic Act, 1996 (Act No. 93 of 1996); and

"**verge**" means a verge as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996).

**Purpose of the By-law**

**2.**(1) The Council recognises the objective of its existence in terms the Constitution which includes –

(a) to promote social and economic development;

(b) to promote a safe and healthy environment; and

(c) municipal planning, trading regulations, licensing and control of undertakings that sell food to the public, markets, public places, municipal roads and street trading.

(2) The Council therefore recognises the need to adopt a developmental approach to enable access to job and entrepreneurial opportunities within the informal trading sector, to harmonise the relationship between the informal trading sector and the formal trading sector and to facilitate the migration of the informal trading sector into the formal trading sector.

(3) The purpose of this By-law is to regulate the informal trading within the jurisdictional area of the Municipality in a manner that recognises and enhances the municipality’s constitutional and other statutory obligations.

**Forms of informal trading**

**3.**(1) Informal trading may include any of the following forms of trading –

(a) street trading, which comprises the selling of goods or supply of services for reward in a public road;

(b) selling of goods in linear market;

(c) sale of goods or services in a public place

(d) mobile trading such as from caravans, and light motor vehicles;

(e) selling of goods in stalls or kiosks; and

(f) selling of goods at special events

**Freedom to engage in informal trading**

**4.** Subject to compliance with the provisions of this By-law, the Act and any other applicable law, any member of the community of the municipality may be permitted to engage in informal trading.

**Designated areas**

**5.**(a) The Council may by resolution in terms of section 6A(3)(b) of the Act, set apart and demarcate stands or areas for the purposes of informal trading on any public road, the ownership or management of which is vested in the Council, or on any other property in the occupation and under the control of the Council.

(b) Any such stands or areas demarcated for informal trading may be extended, reduced or disestablished by resolution of the Council.

(c) The Council may, by resolution in terms of section 6A(3)(a) of the Act, lease any verge or any portion thereof to the owner or occupier of the contiguous land on condition that such owner or occupier will admit a specified number of informal traders in stands or places on such verge designated by the owner or occupier.

**Lease and allocation of stands**

**6.**(1) Any person who intends to carry on a business as an informal trader in terms of the provisions of this By-law may apply to the Council in the prescribed manner for the lease or allocating of a stand in terms of section 6A(3)(c) of the Act.

(2) The Council may grant subject to conditions, or refuse an application referred to in subsection (1).

(3) If such application is successful –

(a) an informal trader must enter into a lease agreement with the Council in respect of such stand, which lease agreement must be produced at the request of an Authorised Official;

(b) in respect of the allocation, as well as the lease of a stand, a token will be issued to an informal trader as proof of an informal trader’s rights to occupy the stand for the purpose of conducting informal trading;

(c) an informal trader must, at all times while carrying on business on the stand or public space, retain such token on his/her person ready for display to an Authourised Official, if requested; and

(d) the Council may, on the written request of the informal trader issue a token to a bona fide employee of the informal trader.

(4) Any person who carries on informal trading on a stand or public place and who, without a reasonable explanation, is unable to produce a valid lease agreement or token as envisaged in subsection (3) above, will be guilty of an offence.

(5) Any person who carries on informal trading on a stand or public place and who, without a reasonable explanation, fails to comply with the terms of conditions of the lease agreement will be guilty of an offence.

**Environmental health and safety**

**7.**(1) An informal trader must –

(a) Keep the area or site occupied by him or her for the purposes of conducting business in a clean and sanitary condition;

(b) Keep his or her property in a clean, sanitary and well maintained condition;

(c) Dispose of litter generated by his or her business in whatever refuse receptacle is provided by the Council for the public or at a dumping site of the Council;

(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 or her for the purposes of conducting informal trading is free of litter;

(f) Take such precautions in the course of conducting his or her business as may be necessary to prevent the spilling onto a public road, or public place, or into a storm water drain, any fat, oil or grease;

(g) Ensure that no smoke, fumes or other substance, odours, or noise, emanating from his or her activities associated with informal trading causes pollution of any kind;

(h) On request by an Authourised Official, move his or her property so as to permit the cleansing of the space or the area or site where he or she is conducting informal trading, or the effecting of municipal services.

**Prohibition**

**8.**(1) No street trader may carry on or undertake street trading –

(a) 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 national monument in terms of the National Monuments Act, 1969 (Act No. 28 of 1969);

(b) on any verge contiguous to a building in which business is being carried on by any person who sells goods of the same nature as, or of similar nature to, goods being sold by the street trader or who offers services of the same nature as, or of a similar nature to, a service offered by the street trader concerned without the consent of such person;

(c) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto;

(d) at any place where the carrying on of such business causes an obstruction to–

(i) the entrance to or exit from a building, or

(ii) a fire hydrant;

(e) in any declared area identified as such in terms of section 6A(2) of the Act in respect of which the carrying on of the business of street trader has been –

(i) prohibited by the Municipality, or

(ii) restricted by the Municipality, unless such business is carried on in accordance with such restrictions;

(f) at any place which has been set apart and demarcated as stands or areas by the Municipality in terms of section 6A(3)(b) of the Act for the purposes of the carrying on of the business of a street trader, unless such business is carried on in accordance with –

(i) an agreement with the Municipality, or

(ii) the allocation by the Municipality to the street trader of any area or stand; and

(g) in any public garden or park except with prior written consent of the Municipality.

(2) The Council may, by resolution in terms of section 6(A)(2) of the Act, declare any place in its area of jurisdiction to be an area in which informal trading is restricted or prohibited, and must, to enable compliance therewith, prescribe or make signs, markings or other devices indicating –

(a) Specified places, goods or services in respect of which informal trading is restricted or prohibited;

(b) the location of boundaries in respect of restricted or prohibited areas;

(c) the boundaries of a stand or area set apart for the purposes of carrying on the business of informal trading;

(d) the fact that any such stand or area has been let or otherwise allocated; and

(e) any restriction or prohibition against informal trading in terms of the By-laws.

(3) The Council may display any such sign, marking or device in such a position and manner as will indicate any restriction or prohibition and the location or boundaries of the area or stand concerned.

(4) Any sign erected in terms of this By-law or any other law, will serve as sufficient notice to an informal trader of the prohibition or restriction in respect of the area concerned.

(5) The resolution of the Council will be subject to the provisions of section 6A(2)(b) to (j) of the Act, which require, *inter alia*, that the Council first consider the effect its resolution will have on the existing informal traders in the designated area in question.

(6) Any sign may be amended from time to time and displayed by the Council for the purpose of this By-law and will have the same effect as a road sign in terms of the Traffic Act.

**Restrictions**

**9.**(1) No person engaging in street trading may –

(a) sleep overnight at the business site;

(b) erect any permanent structure in a public place or public road for the purpose of providing shelter, or

(c) place or store any goods in such a manner or position as to constitute a danger to any person;

(d) carry on such business in such a manner as to–

(i) create a nuisance;

(ii) damage or deface any public road or public place or any public or private property; or

(iii) create a traffic hazard;

(e) obstruct access to a service or to service works of the Municipality or of the State or any statutory body;

(f) interfere with the ability of persons using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;

(g) obstruct access to a pedestrian arcade or mall;

(h) carry on such business in a place or area in contravention of any restriction imposed by a Municipal resolution in terms of section 6A(2)(a) of the Act;

(i) place or store his or her goods on or in a building, without the consent of the owner, lawful occupier, or person in control of such building or property;

(j) attach any of his or her goods by any means to the building structure, pavement, 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;

(k) make an open fire on a public road or public place;

(l) interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window, or obscure such goods from view;

(m) obstruct access to a pedestrian crossing, a parking or loading bay or other facility for vehicular or pedestrian traffic; or

(n) obstruct or inhibit the use of street furniture and any other facility designed for the use of the general public.

**Display of goods**

**10.**(1)A street trader must ensure that any structure, container, surface or other object used by him or her for the preparation, display, storage or transportation of goods –

(a) is maintained in a good state of repair and in a clean and sanitary condition; and

(b) is not so placed or stored so as to constitute a danger to any person.

**Removal and impoundment**

**11.**(1) An inspector may remove and impound any goods which he or she –

(a) reasonably suspects are being used or intended to be used or have been used in or connection with the carrying on of the business of a street trader, and

(b) finds at a place where the carrying on of such business is prohibited or restricted in terms of this By-law, whether or not such goods are in the possession or under the control of any person at the time of such removal and impoundment.

(2) An inspector removing and impounding any goods may –

(a) except in the case of goods which appear to have been abandoned or in respect of which the owner or person having control thereof cannot be found, issue to the owner or person having control of such goods a receipt for the removal and impoundment thereof and stating –

(i) the place where the goods will be kept;

(ii) the amount payable in respect of expenses incurred by the Municipality in impounding and removing the goods; and

(iii) the date on or after which the goods will be sold or destroyed unless claimed; and

(b) forthwith place such goods in safe custody within the control of the Municipality.

(3) Neither the Municipality nor any inspector, officer or employee of the Municipality will be liable for any loss, theft or damage to any goods removed and impounded in terms of this By-law.

 **Disposal of impounded goods**

 **12**(1) Any goods impounded in terms of this By-law must be dealt with as follows –

(a) if the goods are claimed, the street trader must pay the expenses incurred by the Municipality for impoundment; and

(b) if the goods are not claimed within the period specified on the receipt issued in terms of this By-law, the goods must be sold to defray expenses incurred by the Municipality in impounding and removing the goods.

(2) In the event that the goods –

(a) are not capable of being sold, they must be destroyed after the time specified on the receipt issued in terms of this By-law; and

(b) are perishable, they may be sold or destroyed as soon as may be necessary.

(3) If the proceeds contemplated by this section are insufficient to pay for the expenses incurred by Municipality, the owner will be liable for any excess.

**Vicarious liability of persons carrying on informal trading**

**13.**(a) When an employee or agent of an informal trader contravenes a provision of this By-law, the informal trader will be deemed to have committed such contravention unless such informal trader satisfies the court that he or she took reasonable steps to prevent such contravention.

(b) The fact that the informal trader issued instructions to the employee or agent, prohibiting such contravention, will not in itself constitute sufficient proof of such reasonable steps.

**Offences and penalties**

**14.**(1) Whenever the Municipality is of the opinion that a person has not complied with the provisions of this section, it may serve a written notice on such person, calling upon him or her to comply with such provisions within a period specified in the notice.

(2) Any person who –

(a) contravenes or fails to comply with any provision of this By-law; or

(b) fails to comply with the terms of any notice served upon or given to him in terms of this By-law,

is guilty of an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding one year

**Policy**

**15.**(1) The Council may make policy regarding –

(a) the declaration of any place to be an area in which informal trading is restricted or prohibited and the prescription or making of signs, markings or other devices, as contemplated in this By-law;

(b) The setting apart and demarcation of stands or areas for the purposes of street trading and the extension, reduction or disestablishment therefrom as contemplated in terms of this By-law;

(c) The disposal of any property which has been removed and impounded, as contemplated in this By-law;

(d) The liability of any person for any reasonable expenses incurred in connection with such removal, impoundment and disposal;

(e) The prescription of penalties for the offences contemplated in terms of this By-law;

(f) The amendment of such penalties from time to time; and

(g) Any matter which may be prescribed in terms of this By-law and any matter which may facilitate the application of this By-law.

(2) (a) The Council will not within one month before promulgating a policy in terms of subsection (1), cause a draft of the regulation to be communicated to the local community and to be made public in terms of sections 21 and 21A of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) together with a notice declaring the intention of the Council to issue such a regulation and inviting comments or representations.

(b) If the Council decides to alter the draft policy as a result of comments or representations received pursuant to such invitation, then it will not be necessary to communicate and make public the alteration before the amended draft is promulgated as a policy.

**Repeal of existing By-laws**

**16.** The Municipality’s existing Street trading By-laws are hereby repealed.

**Short title**

**17.** This By-law will be called the Municipality Street Trading By-Law, 20\_\_\_\_.