

## BY-LAW

To provide for the control of street trading in the Emthanjeni municipality; and for matters connected therewith.

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**BE IT ENACTED** by the Emthanjeni municipality, as follows:-

### Definitions

1. In this By-law, unless the context otherwise indicates –

“**authorised officer**” means an officer in the employ of the Municipality authorised by the Municipality to enforce this By-law;

“**designated area**” means an area listed in the Schedule in which street trading is allowed, subject to this By-law;

“**do business**” means to buy, sell or barter any goods or to provide or offer to provide any service for remuneration;

“**Municipality**” means the **Emthanjeni** municipality;

“**Municipal Manager**” means the person appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**property**” means, with regard to a person doing business as a street trader, any article, receptacle, vehicle or structure used or intended to be used in connection with such business;

“**public place**” includes any land, park or open space, road, street, sanitary passage or thoroughfare, bridge, building or structure which is commonly used by the public and is the property of the Municipality or, of which the control, to the entire exclusion of the owner, is vested in the Municipality or to which the inhabitants of the Municipality have a common right or access;

“**street trader**” means a person who does business in, at or from a public place, but shall not include a person selling newspapers, and “**street trade**” or any like words shall have a corresponding meaning;

“**verge**” means that part of any road, street, sanitary passage or thoroughfare, including a sidewalk, that is or forms part of a public place, which is not improved, constructed or intended for the use of vehicular traffic.

### **Street trading restricted**

2. (1) No person shall do business as a street trader –
  - (a) except with the prior written permission of the Municipality and in accordance with the conditions set out in the permission;
  - (b) unless he or she –
    - (i) is a South African citizen or has been granted the right of permanent residency or a work permit by the immigration authorities; and
    - (ii) owns fixed property in the area of jurisdiction of the Municipality or is for some other reason liable to pay rates and taxes to the Municipality;
  - (c) outside a designated area; and
  - (d) at any time other than during the hours specified in this By-law.
- (2) Any person who does business as a street trader must have the written permission referred to in subsection (1)(a) in his or her possession and produce it on request to an authorised officer.
- (3) The Municipality may, in writing, for the duration of a specific event and subject to any conditions determined by the Municipality, exempt any person, or group of persons, from compliance with any or all of the provisions of subsection (1).

### **Application for and issue of written permissions**

3. (1) An application for permission to do business as a street trader must –
  - (a) be directed to the Municipal Manager;
  - (b) be in the form determined by the Municipality; and
  - (c) be accompanied by the fees determined by the Municipality, as well as fees for services or structures provided by the Municipality at the designated area, where applicable.
- (2) The Municipal Manager must consider the application and grant or refuse the permission within 30 days after receipt of the application.
- (3) If the application is successful, the Municipal Manager must forthwith issue the written permission setting out the conditions subject to which it is issued.

- (4) If the application is unsuccessful, the Municipal Manager must forthwith notify the applicant accordingly and provide written reasons for his or her decision.
- (5) The provisions of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), shall *mutatis mutandis* apply to an appeal against a decision of the Municipal Manager contemplated in subsection (4).

#### **Duration, renewal, lapse and withdrawal of written permissions**

- 4. (1) A written permission to do business as a street trader shall –
  - (a) be granted for a period not exceeding 12 months;
  - (b) be extended for a period of 12 months at a time if payment of the fees determined by the Municipality is made by the street trader concerned before the end of the initial period of 12 months or each further period of 12 months, as the case may be;
  - (c) lapse if the fees contemplated in paragraph (b) is not paid on time.
- (2) The Municipality may withdraw its permission to a person to do business as a street trader if the street trader –
  - (a) does not comply with or acts contrary to any condition set out in the permission;
  - (b) contravenes or fails to comply with any provision of this By-law or any other law;
  - (c) fails to obey or comply with a lawful direction or request given or made by an authorised officer;
  - (d) ignores or contravenes the provisions of a sign or notice displayed by the Municipality in terms of this By-law.

#### **Designated areas and hours of trade**

- 5. (1) The areas listed in Part 1 of the Schedule shall, subject to the provisions of this By-law and any other law, be designated as areas in which a street trader may do business.
- (2) No person shall do business as a street trader except during the hours 08:00 to 18:00 on any day.

**General conduct of street traders**

6. No person who does business as a street trader shall –
- (a) place his or her property or goods in a public place that is not a designated area;
  - (b) allow his or her property or goods to cover a larger area than his or her allocated lot or stand in a designated area listed in Part 2 of the Schedule, if applicable;
  - (c) place or stack his or her property or goods in such a manner that it constitutes a danger to any person or property or is likely to injure any person or damage property;
  - (d) erect any structure for the purpose of providing shelter at the designated area without the prior written approval of the authorised officer;
  - (e) obstruct access to a fire hydrant or area demarcated solely for the use of emergency vehicles or services;
  - (f) leave his or her property or goods at the designated area before or after trading hours, except in a permanent structure provided by the Municipality for that purpose;
  - (g) when requested by an employee or agent of the Municipality or any supplier of telecommunication, electricity or other services, omit or neglect to move his or her property or goods so as to permit the carrying out of any work with regard to a public place or any such service;
  - (h) attach any object or goods by any means to any building, structure, pavement, tree, parking meter, lamp post, electricity pole, telephone booth, post box, traffic sign, fence, bench or any other street furniture in, on or at a public place;
  - (i) make an open fire at the designated area or in circumstances where it could harm a person or damage a building or vehicle;
  - (j) do anything or keep combustibles in quantities contrary to the provisions of any law regarding the prevention or fighting of fires;
  - (k) disregard a reasonable requirement put by any officer of the Municipality commissioned with the prevention or fighting of fires, regarding his or her trade;
  - (l) store his or her property or goods in a manhole, stormwater drain, bus shelter, public toilet or tree;

- (m) sell his or her goods by using a megaphone, radio, loudspeaker, or by constant shouting or singing, in a manner which may constitute a nuisance or disturbance;
- (n) sell any property or goods which are dangerous or hazardous to the public health.

### **Cleanliness**

7. (1) A person doing business as a street trader shall –
- (a) keep his or her property or goods and the designated area in a clean and sanitary condition;
  - (b) dispose of litter generated by his or her business in whatever receptacles provided therefor by the Municipality, including recycling and dumping sites, and not dispose of litter in any manhole, stormwater drain or any other place not intended for the disposal of litter;
  - (c) ensure that on completion of business for the day the designated area is free of litter;
  - (d) take such precautions as may be necessary or prescribed by the Municipality to prevent the spilling onto a public place of any fat, oil, grease or any hazardous substances which might be generated in the course of conducting his or her business and to prevent that any smoke, fume, odour or noise emanating from his or her activities become a nuisance.
- (2) The Municipality shall –
- (a) provide receptacles at designated areas in order to facilitate the disposal of litter by street traders;
  - (b) ensure that the receptacles at designated areas are emptied, cleaned and sanitised on a regular basis.

### **Obstruction created by street trading prohibited**

8. (1) No person shall do business as a street trader at a place where such business –
- (a) obstructs access to or the use of a street facility such as a bus stop, shelter or queuing line, refuse disposal bin or other facility intended for public use;
  - (b) obstructs the visibility of a display window, signboard or premises;

- (c) obstructs access to a building, automatic bank teller machine or queuing line, pedestrian crossing or vehicle;
- (d) leaves less than 2 metre in width of a sidewalk clear for pedestrian use, or in any other manner obstructs pedestrians in their use of a sidewalk;
- (e) obscures or impedes the view of any user of the road;
- (f) causes an obstruction on a roadway;
- (g) limits access to parking or loading bays or other facilities for vehicular traffic;
- (h) obscures any road traffic sign or any marking, notice or sign displayed or made in terms of this By-law or any other law; or
- (i) interferes in any way with any vehicle that may be parked alongside such place.

**Street trading may not compete with existing businesses**

9. No person shall do business as a street trader on a verge contiguous to that part of a building in which business is being carried on by another person, other than the business of a department store, supermarket or wholesaler, where the goods or services that the street trader sells or provides are of the same nature or similar to the goods being sold or services provided by the other person.

**Street trading restricted to allocated lots or stands in certain designated areas**

10. (1) The Municipal Manager may, when granting permission to an applicant to do business as a street trader, allocate a specific lot or stand demarcated in a designated area to the applicant, and no other person, except his or her assistant or employee, may do business on or from such lot or stand.
- (2) A street trader to whom a specific lot or stand was allocated shall –
- (a) do business only on or from such lot or stand;
  - (b) not sub-let or transfer to any other person the right to do business on or from such lot or stand;
  - (c) be in possession of proof that permission was granted to him or her to do business on or from the lot or stand concerned and, on request, produce such proof to an authorised officer.

- (3) The designated areas in which street trading may only be done from a specific demarcated lot or stand are listed in Part 2 of the Schedule.

**Street trading prohibited near places of worship, monuments and certain buildings**

11. No person shall do business as a street trader on a verge contiguous to –
- (a) a place of worship of any faith or denomination;
  - (b) a historical monument;
  - (c) a building used for public purposes;
  - (d) a building, used exclusively for residential purposes, if –
    - (i) the owner, person in control or occupier of any part of the building facing onto such verge has objected in writing against such trading to the Municipality; and
    - (ii) the fact that such objection was made, has been made known in writing by the Municipality to the street trader concerned.

**Display of signs by the Municipality**

12. The Municipality may display any sign or notice to give effect to the provisions of this By-law.

**Street trading from mobile stands**

13. Notwithstanding the provisions of this By-law, the Municipality may allot tenders to persons to trade from mobile stands, subject to the conditions determined by the Municipality.

**Removal and impoundment**

14. (1) An authorised officer may remove and impound any article, receptacle, vehicle or structure –
- (a) which he or she reasonably suspects is being used or has been used for or in connection with street trading; and
  - (b) which he or she finds at a place where street trading is restricted or prohibited in terms of this By-law, which, in his or her opinion, constitutes an infringement of this By-law.

- (2) An authorised officer acting in terms of this By-law shall –
  - (a) keep proper record of any property so removed and must inform the person apparently in control of such property (if there is such a person), of the procedure to be followed for reclaiming such property and the venue where such property will be impounded; and
  - (b) forthwith deliver any such property to the pound referred to in paragraph (a).
- (3) Any property removed and impounded as contemplated in subsection (1) –
  - (a) may, in the case of perishable property, be sold or destroyed within a reasonable time after the impoundment thereof: Provided that such property shall, subject to the provisions of subsection (4), at any time prior to the disposal or selling thereof, be returned on proof of ownership and: Provided further, that such perishables are still fit for human consumption;
  - (b) shall, subject to the provisions of subsection (4), in the case of property other than perishable property, be returned on proof of ownership within a period of 1 month of the date of impoundment.
- (4) The Municipality shall be entitled to keep the property concerned until all expenses have been paid, failing which the property may be sold by public auction upon 14 day's notice: Provided that where the property attached is perishable, the authorised officer may reduce the period of 14 days to such an extent as he or she may think fit, or destroy the perishable property, whichever is the most cost-effective.
- (5) In the case of a sale of impounded property by the Municipality, the proceeds of such sale, less the reasonable expenses incurred by the Municipality in connection with the removal, impoundment or disposal of such property, shall be paid to the person who was the owner of such property when such property was impounded, but if such former owner fails to claim the said proceeds within 3 months of the date on which such property was sold, such proceeds shall be forfeited to the Municipality and shall be paid into a special fund created by the Municipality dedicated to the development of the informal sector and matters ancillary thereto.
- (6) The owner of property which has been removed, impounded, sold or disposed of as contemplated in this section, shall be liable for all expenses incurred by the Municipality in connection with such removal, impoundment, sale or disposal.



## **Offences**

15. Any person who –

- (a) contravenes or fails to comply with any provision of this By-law;
- (b) ignores, disregards or disobeys any notice, sign or marking displayed or erected in terms of this By-law;
- (c) contravenes or fails to comply with any approval granted or condition imposed in terms of this By-law;
- (d) fails to comply with a lawful written instruction by the Municipality to move or remove his or her property;
- (e) deliberately furnishes false or misleading information to an officer or an employee of the Municipality; or
- (f) threatens, resists, interferes with or obstructs an officer or employee of the Municipality in the performance of his or her powers, duties or functions under this By-law,

shall be guilty of an offence.

## **Penalty clause**

16. Any person convicted of an offence under this By-law shall be liable to a fine or imprisonment for a period not exceeding 1 year, or to both a fine and such imprisonment.

## **Vicarious responsibility of persons doing business as street traders**

17. (1) When an employee or assistant of a person doing business as a street trader, does or omits to do any act which would be an offence in terms of this By-law, that person shall be deemed himself or herself to have done or omitted to do the act, unless he or she satisfies the court that –
- (a) he or she neither connived at nor permitted the act or omission by the employee or assistant concerned; and
  - (b) he or she took all reasonable steps to prevent the act or omission.
- (2) The fact that the street trader alleges that he or she issued instructions whereby an act or omission is prohibited shall not in itself be sufficient proof that he or she took all reasonable steps to prevent the act or omission.

**Vicarious responsibility of employees and assistants**

18. When a person doing business as a street trader is, in terms of section 17, liable for an act or omission by an employee or assistant, that employee or assistant shall also be liable as if he or she were the person carrying on the business concerned.

**Repeal of laws and savings**

19. (1) The following laws are hereby repealed:

**All previous by-laws with regard to this matter are hereby repealed.**

- (2) Any permission obtained, right granted, condition imposed, activity permitted or anything done under a repealed law, shall be deemed to have been obtained, granted, imposed, permitted or done under the corresponding provision (if any) of this By-law, as the case may be.

**Short title**

20. This By-law shall be called the Street Trading Control By-law, 2008

# SCHEDULE

## **Part 1** (section 5(1))

Areas designated for street trading:

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...

## **Part 2** (section 10(3))

Designated areas in which street trading may only be done from specific demarcated lots or stands:

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