

Msukaligwa Local Municipality



Draft Street Trading By-Law

STREET TRADING BY-LAW

In terms of section 156(2) of The Constitution of the Republic of South Africa, 1996, the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) and the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998), the Chief Albert Luthuli Municipal Council has made the following by-law as set forth hereunder.

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Definitions

1. (1) In these by-law, unless the context indicates otherwise:

"**authorised official**" means an official of the Council authorised to implement the provisions of the by-law and "officer" shall have a corresponding meaning;

"**building**" means normal brick structures and includes informal structures such as "shanties or movable such as caravans";

"**Council**" means the Msukaligwa Local Municipal Council and includes the Mayor, Political Office Bearers, Political Structures, Municipal Manager and any other official who has delegated powers in terms of section 59 of the Local Government: Municipal Systems Act (Act 32 of 2000);

"**foodstuff**" means any article or substance [except a drug as defined in the Drugs and Drugs Trafficking Act, (Act 140 of 1992)], ordinarily eaten or drunk by persons 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 or substance;

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

"**goods**" means any transferable interest but excludes any living thing and hazardous substances;

"**litter**" means any waste materials and includes any container or other matter which has been discarded, abandoned or left behind by a person trading or his/her customers;

"**pavement**" means a sidewalk or that portion of a road reserved for the use of pedestrians;

"**national monument**" means a building declared to be a national monument under the National Monuments Act, 1969 (Act No. 28 of 1969);

"**nuisance**" means any action or behaviour by anyone which constitutes a disturbance or causes discomfort to anyone;

"**perishables**" means milk, meat, fish, crustaceans, fruit and vegetables as well as products which require special storage facilities;

"**premier**" means the Premier of the Mpumalanga Province or Member of the Executive Council who is charged with the responsibility of the administration of the Business Act (Act No. 71 of 1991);

"**prohibited area**" means any place declared or to be declared under subsection 6A(2) of the Act by resolution of the Council to be an area in which street trading may be prohibited;

"**property**" means 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/she trades;

"**public building**" means a building occupied solely by the State or the Council or any organs or state;

"public place" means any square, park, recreation ground, sport ground, sanitary lane or open space which has-

- (a) in connection with any subdivision or layout of land into erven, lots of plots, been provided, reserved or set apart for use by the public or the owner or occupiers of such erven, lots of plots, whether or not it is shown on a general plan, plan of subdivision or diagram;
- (b) at any time been dedicated to the public;
- (c) been used without interruption by the public for a period at least 30 years expiring after 31 December 1959; or
- (d) at any time been declared or rendered such by a Council or other competent authority;

"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;

"restricted area" means any place declared under subsection 6A(2) of the Act by resolution of the Council to be an area in which street trading may be restricted;

"street trader" means a person that is mobile and sells goods for own profit whether such goods are the product of his/her own labour or not;

"sell" means alienation for value and includes supply to and also-

- (a) exchange or hire;
- (b) store, expose, offer or prepare for sale, and "sale" has a corresponding meaning;

"services" means includes any advantage or gain for consideration or reward;

"the Act" means the Business Act, 1991 (Act No 71 of 1991);

"trade" means the lawful sale of goods or services in a public road or public place, and "trading" has a corresponding meaning;

"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 Business Act, 1991 (Act No, 71 of 1991).

- (2) For the purpose of this by-law a single act of selling in a public place shall constitute trading.

Right to trade

- 2. (1) Subject to the provisions of sections 3 and 4 and any other law, street trading is permitted except in so far as such trading is restricted or prohibited by sections 5 to 13 inclusive, provided further that no person who is not a South African resident shall be entitled to operate as a street trader unless he/she is in possession of a valid work permit authorising such street trading.

General conduct of street traders

3. (1) A person shall -
- (a) not place his/her property on a verge or public place except for the purpose of commencing to trade;
 - (b) ensure that his/her property does not cover an area of a public road, public place or pavement which is greater in extent than three square metres (3m²) unless written permission for a greater area is obtained from the Council ;
 - (c) not trade on pavements narrower than 2,5m
 - (d) not place or stack his/her property in such a manner that it constitutes a danger to any person or property or is likely to injure any person or damage property;
 - (e) not erect any structure for the purpose of providing shelter or sleep overnight at the place of business without the prior written approval of the Council provided that where approval is given for a shelter to protect goods he/she shall not erect an unsightly structure from which to conduct business;
 - (f) not obstruct access to a fire hydrant or area demarcated solely for the use of emergency vehicles and/or services;
 - (g) on concluding business for the day, remove his/her property, except any permanent structure permitted by the Council , to a place which is not part of a public road or public place;
 - (h) 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 to a public road, place or any such service;
 - (i) not attached 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 or on a public road or public place;
 - (j) not make an open fire at a place of trading or in circumstances where it could harm a person or damage a building or vehicle;
 - (k) not store his/her property in manhole or storm water drain, bus shelter, public toilet or tree;
 - (l) not sell his/her goods in a street by constantly using megaphones, radios, loudspeakers, or constantly shouting or singing in a manner which shall constitute a nuisance or disturbance in the area;
 - (m) not commence street trading unless he/she registers with the Council and pay such fees or costs for services reasonably required including the costs of leasing any trading space or structure provided by the Council .

Cleanliness

4. (1) A person trading shall-
- (a) keep his/her property and the area or site occupied by him/her for the purpose of such business in a clean and sanitary condition;
 - (b) dispose of litter generated by his/her business in whatever receptacles provided therefor by the Council , including recycling and dumping sites, and not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
 - (c) 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.
 - (d) take such precautions as may be necessary or prescribed by the Council to prevent the spilling onto a public road or public place of any fat, oil, grease or any hazardous substances in the course of conducting his/her business and prevent any smoke, fumes, odour or noise emanating from his/her activities from becoming a nuisance.

- (2) The Council shall-
- (a) ensure that the site on which the street traders are trading are cleaned and sanitised on a regular basis;
 - (b) provide receptacles on the sites in order to facilitate the disposal of litter by the street traders; and
 - (c) ensure that the receptacles are emptied on a regular basis in order to facilitate clean trading sites.

Obstruction of pedestrians

5. (1) No person shall trade at a place where such trading-
- (a) obstructs access to or use of street facilities 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) obstructs the visibility of a display window, signboard or premises, if the person carrying on business in the premises concerned objects thereto;
 - (c) obstructs access to a building in width, automatic bank teller machine, pedestrian crossing or motor vehicle;
 - (d) leaves less than 1,5m in width of a sidewalk clear for pedestrian use, or in any manner substantially obstructs pedestrians in their use of a sidewalk.

Obstruction of vehicle traffic

6. (1) No person shall trade at a place where such trading-
- (a) cause 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 this or any other by-law; or
 - (d) interferes in any way with any vehicle that may be parked alongside such place;
 - (e) obscures or impedes the view of any user of the road, any traffic sign or any other road user.

Trading restricted to specified hours in certain places

7. (1) 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, compiled according to the consultation process outlined in subsections 6A(2)(a) to (j) of the Act, outside the hours so specified in relation to each garden, park, verge or area.

Trading restricted to specified goods or services in certain places

8. (1) No person shall trade-
- (a) on a verge contiguous to any place of worship, national monument or public building;
 - (b) in a restricted area, which is specified in Schedule B, compiled according to the consultation process outlined in subsections 6A(2)(a) to (j) of the Act, other than the goods or services so specified in relation to each such garden, park, verge or area; or

- (c) 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 of the same nature as or of a similar nature to goods being sold by the first-mentioned person without the consent of the second-mentioned person.

Trading restricted to demarcated stands or areas in certain places

9. 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, compiled according to the consultation process outlined in subsections 6A(2)(a) to (j) of the Act outside a stand or area set apart for trading purposes as contemplated in subsection 6A(3)(b) of the Act.

No trading in stands or areas which have been let except by the lessee

10. If the Council has let or otherwise allocated any stand or area set apart or otherwise established for street trading purposes, as contemplated in subsection 6A(3)(c) of the Act, no person may trade in such area if he/she is not in possession of proof that he/she has hired such stand or area from the Council of that it has otherwise been allocated to him/her.

No trading near certain public buildings, places of worship and national monuments

11. No person shall trade on a verge contiguous to any place of worship, national monument or public building which is specified in Schedule D, compiled according to the consultation process outlined in subsections 6A(2)(a) to (j) of the Act, unless he/she obtains written consent from the Council, which consent shall not be unreasonably withheld.

No trading in prohibited area

12. No person shall trade in any prohibited area, prohibited for that purpose by the Council.

Trading near residential buildings

13. No person shall, outside an area specified in Schedule E, compiled according to the consultation process outlined in subsections 6A(a) to (j) of the Act, trade in that half of a public road contiguous to a building used exclusively for residential purpose if-

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

Signs indicating restrictions and area

14. The Council may -

- (a) by resolution, after consultation with all interested parties, prescribed signs, markings or other devices approved by the Premier indicating -
 - (i) specified hours, places, goods or services in respect of which street trading is restricted;
 - (ii) the location or boundaries of a restricted area;
 - (iii) the boundaries of a stand or area set apart for the purpose of the carrying on of the business of street trading under subsection 6A(3)(b) of the Act;

- (iv) the fact that any such stand or area has been let or otherwise allocated;
 - (v) any restrictions or prohibition against trading in terms of this by-law; and
 - (vi) the location of boundaries of a prohibited area; and
- (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 of stand concerned.

Removal and impoundment

15. (1) An officer may remove and impound any goods, articles, receptacle, vehicle or structure-
- (a) which he/she reasonable suspects is being used or has been used in or in connection with street trading; and
 - (b) which he/she finds at a place where street trading is restricted or prohibited in terms of sections 5 to 13 inclusive and which, in his/her opinion, constitutes an infringement of any such section; or
 - (c) which constitutes an infringement of subsection 3(d) hereof.
- (2) Any officer acting in terms of these provisions shall-
- (a) except in the case of goods which have been left or abandoned, issue forthwith to the person carrying on the business of street trader a detailed receipt for any property so removed and where the property will be impounded and the procedure for reclaiming such property; and
 - (b) forthwith deliver any such property to the Council .
- (3) Any property removed and impounded as contemplated by subsection 6A of the Act-
- (a) may, in the case or perishable property, be sold or destroyed by the Council concerned within a reasonable time after the impoundment thereof, provided that such property shall subject to the provisions of 15 (4) hereunder, at any time prior to the disposal thereof, be returned to the owner on request and proof ownership by such owner to the Council concerned provided such perishables are still fit for human consumption;
 - (b) shall, subject to the provisions of 15(4) hereunder, in the case of property other than perishable property, be returned to the owner thereof on request and proof of ownership by such owner to the Council concerned within a period of one month of the date of impoundment.
- (4) The Council concerned shall be entitled to keep to property concerned until all reasonable expenses have been paid to it, failing which the property may be sold by public auction upon 14 days' notice being given to the owner or in the case of perishable goods either be sod or destroyed by such Council
- (5) In case of a sale of impounded property by a Council, the proceeds of such sale less the reasonable expenses incurred by such Council in connection with the removal, impoundment and/or disposal of such property, shall be paid to the person who was the owner of such property when such property was impounded. If such owner fails to claim the said proceeds with in three months of the date on which such property was sold, such proceeds shall be forfeited to such Council and shall be paid onto a special fund created by such Council dedicated to the development of the informal sector and matters ancillary thereto.
- (6) In the event of the proceeds of any sale of property contemplated by this provision not being sufficient to defray the reasonable expenses incurred by the Council concerned in connection with such removal, impoundment and/or disposal.

Offences

16. 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 for purpose of this by-law;
 - (c) contravenes or fails to comply with any approval or conditions granted or imposed in term this by-law;
 - (d) fails to comply with a written instruction to move or remove his/her property;
 - (e) deliberately furnishes false or misleading information to an officer or an employee of the Council ; or
 - (f) threatens, resists, interferes with or obstructs an officer or employee of the Council the performance of his/her powers, duties or functions under this by-law; shall be guilty of an offence.

Penalties

17. Any person who is guilty of an offence in terms of this by-law shall on conviction be liable to a fine not exceeding R_____ or to imprisonment for a period not exceeding _____.

Vicarious responsibility of persons carrying on business

18. When an employee of a person conducting the business of street trading does or omits to do anything which would be an offence in terms of this by-law for that person to do or omit to do, that person shall be deemed himself/herself to have done or omitted to do the act, unless he/she satisfies the court that -
- (a) he/she neither connived at 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 employer concerned, and the fact that the said person issued instructions whereby an act or omission that nature is prohibited shall not in itself be sufficient proof that he/she took all reasonable steps to prevent the act or omission.

Vicarious responsibility of employees

19. When a person carrying on the business of street trading is by virtue of section 18 liable for an act of 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.

Appeals

20. (1) Any person who feels him/herself aggrieved by the decision of the Council may appeal against such decision to an appeal committee in accordance with the provisions set out herein.
- (2) Any person who feels him/herself aggrieved by a decision of the Council shall notify the Council of his/her intention to appeal the decision in writing within 10 days of having received notification of the Council's decision.

Constitution of an appeal committee

- 21.
- (1) The member of the Executive Council of Economic Affairs may, with the concurrence of the Council, representatives of the informal traders and any other interested person, designate persons as members and alternate members of the Appeal Committee.
 - (2) The Appeal Committee shall consist of a maximum of 7 (seven) members with at least 1(one) member from the relevant sector.
 - (3) The members of the Appeal Committee shall appoint a member to act as a Chairperson and Deputy Chairperson respectively.
 - (4) When the chairperson is unable to perform the function of Chairperson, the Deputy Chairperson shall perform the function of Chairperson
 - (5) If the Chairperson is of the opinion that a particular person is able to assist the Appeal Committee, he/she may co-opt that person for that purpose.
 - (6) A person so co-opted shall not be entitled to vote at any meetings of the Committee.
 - (7) The chairperson shall notify the aggrieved person of the date, time and place of the meeting of the Appeal Committee at which his/her presence is required within 10 days of receipt of one Notice of Appeal.
 - (8) The aggrieved person who has received notice in terms of provision 21 (7) shall personally appear at the meeting or appoint a legal representative or any other person to appear on his/her behalf.
 - (9) An authorised official or a legal representative may represent the Council concerned.

Procedure at appeal meetings

- 22.
- (1) The Chairperson shall determine the procedure of the meeting, provided -
 - (a) such procedures adhere to the *audi alteram partem* principle; and
 - (b) all parties are advised seven days prior to the hearing and the procedures to be observed.
 - (2) All members shall be present at the meeting of the Appeal Committee.
 - (3) Any person present at the meeting may -
 - (a) be called upon by the Chairperson to give evidence;
 - (b) be called upon by the Chairperson to produce to the Committee any document or any other property which is in his/her possession or under his/her control; or
 - (c) be questioned by the Committee on the matter before it.
 - (4) The Appeal Committee shall review the decision of the Council and make a finding having regard to the following considerations;
 - (a) Whether the decision of the Council was fair and equitable in the circumstances;
 - (b) The effect of the decision on the ability to trade of the aggrieved person; and
 - (c) Whether alternative measures may be adopted to facilitate the continued business of the aggrieved person.

- (5) Decision of the Committee shall be taken by a majority of votes of the members present at the meeting and in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his/her deliberative vote.
- (6) The Appeal Committee may after consideration by it of the evidence presented -
 - (a) refuse the appeal;
 - (b) uphold the appeal; or
 - (c) take such other steps as it may think fit.
- (7) The Appeal Committee shall as soon as it is practicable -
 - (a) notify the aggrieved person of its decision in writing; and
 - (b) furnish the aggrieved person with written reasons for its decision.

SCHEDULE A

PLACES WITH RESTRICTED TRADING HOURS

PLACES

TRADING HOURS

- (a) Gardens and parks
- (b) Verges contiguous to the following:
places of worship, national monuments and public buildings
- (c) Restricted areas:
(with number and date of notice of declaration thereof)

With regard to (a),(b) and (c) above, the hours determined by Council after receiving specific applications.

SCHEDULE B

PLACES WHERE GOODS OR SERVICES ARE RESTRICTED

PLACES

PERMITTED GOODS OR SERVICES

- (a) Gardens and parks
- (b) Verges contiguous to the following:
places of worship, national monuments and public buildings
- (c) Restricted areas:
(with number and date of notice of declaration thereof)

With regard to (a),(b) and (c) above, the goods and services determined by Council after receiving specific applications.

SCHEDULE C

PLACES WHERE TRADING IS TRSTRICATED TO DEMARCATED STANDS AND AREAS

PLACES

- (a) Gardens and parks.
- (b) Verges contiguous to the following:
places of worship, national monuments and public buildings.
- (c) Restricted areas:
(List areas)

SCHEDULE D

VERGES WHERE TRADING IS PROHIBITED

Verges contiguous to the following:

- (a) Public Buildings.
- (b) Places of worship.
- (c) National monuments.

SCHEDULE E

AREAS EXCLUDED FROM RESTRICTION ON TRADING NEAR RESIDENTIAL BUILDINGS

- (a) Townships and portions of townships.
- (b) Public roads and portions of public roads.
