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Street Trading By-law, 2019

Legislation as at 21 October 2019

Note: This By-law was **repealed** on 2022-06-07 by Informal Trading By-law, 2022.

Note: This By-law has **not yet come into force**.

There may have been updates since this file was created.

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Not commenced; Repealed

Winnie Madikizela-Mandela
South Africa

Street Trading By-law, 2019

Published in Eastern Cape Provincial Gazette 4329 on 21 October 2019

Not commenced

[This is the version of this document from 21 October 2019.]

[Repealed by Informal Trading By-law, 2022 on 7 June 2022]

To give effect to the Municipalities street trading by law and the implementation thereof i.e. it is the process utilised by the municipality to ensure responsible street trading and services rendered by street traders. Further to that to provide for the development and management of the informal sector trading (second economy) within the area of the Municipality.

WHEREAS in terms of section 11 (3)(m) of the Local Government; Municipal Systems Act 32 of 2000, read with section 162 of the Constitution of the Republic of South Africa Act 108 of 1996, municipalities have the legislative power to promulgate by-laws regarding any matter which falls within its functional competence;

NOW THEREFORE the Council of the Mbizana Local Municipality, acting in terms of section 156 read with Schedule 5 (Part B) of the Constitution of the Republic of South Africa Act 108 of 1996, and read with section 1 of the Local Government: Municipal Systems Act 32 of 2000, hereby makes the following By-Law: THE STREET TRADING BY LAW

1. Definitions

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;

"**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;

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

"**municipality**" means the Municipality of Mbizana, 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 subdelegated to such political structure, political office bearer, councilor, agent or employee;

"**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.

Not commenced; Repealed

"**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;

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

"**roadway**" means a roadway as defined in section 1 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 a person who, as hawker, vendor or pedlar as contemplated in the Businesses Act, 1991 (Act 71 of 1991), carries on the business of the selling of any goods or the supplying of or offering to supply any service for reward in a public road or public amenity;

"**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. Scope and objectives of the by-law

(1) This *By-Law* applies to the Municipality's area of jurisdiction, and is only applicable to the street traders of Mbizana Municipal area.

(2) The objectives of the Street trading By-Law are as follows-

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

3. Restricted and prohibited areas

(1) The municipality may, in terms of this by-law declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited.

(2) The municipality must by public notice and by erected sign indicate such areas, and the notice and sign must indicate-

(a) the restriction of prohibition against street trading;

(b) if street trading is restricted -

(i) the boundaries of the area or stand set aside for restricted street trading;

(ii) the hours when street trading is restricted or prohibited; and

(iii) the goods or services in respect of which street trading is restricted or prohibited; and

(c) that the area has been let or otherwise allocated.

(3) The municipality may change the areas contemplated by it if the needs and circumstances of residents and street traders demand such reconsideration.

(4) A person who carries on the business of a street trader in contravention of a notice contemplated by the Municipality commits an offence.

4. Prohibited conduct

(1) No person shall carry on the business of a street trader-

(a) at a place or in an area declared by the municipality as a place or area in which street trading is prohibited;

(b) in a garden or park to which the public has a right of access;

(c) on a verge contiguous to-

(i) a building belonging to, or occupied solely by, the municipality, or any other sphere of government;

(ii) a church, mosque, synagogue, or other place of worship;

(iii) a building declared to be a public monument;

(iv) an auto teller bank machine;

(d) at a place where it causes an obstruction in respect of-

(i) a fire hydrant; or

(ii) any entrance to, or exit from a building;

(e) at a place where it is likely to obstruct vehicular traffic;

(f) at a place where it could substantially obstruct a pedestrian, in his or her use of a sidewalk;

(g) 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 that building objects thereto, and such objection is made known to the street trader by an authorised official;

(h) on a stand or in any area demarcated by the municipality, if he or she is not in possession of proof that he or she has hired such stand or area from the municipality, or that such stand has otherwise been allocated to him or her by the municipality; and

(i) on a sidewalk contiguous to a building in which business is being carried in by any person who sells goods of the same or of a similar nature to the goods being sold on such sidewalk by the street trader, if the goods are sold by the street trader without the prior consent of first-mentioned person, and an authorised official has informed the street trader that such consent does not exist.

(2) A person who has hired a stand from, or who has been allocated a stand by, the municipality, may not trade in contravention of the terms and conditions of such lease or allocation.

5. Restricted conduct

A person carrying on the business of a street trader-

(a) may not sleep overnight at the place of such business;

(b) may not erect any structure for the purpose of providing shelter, other than a structure provided or approved by the municipality;

(c) may not place his or her property on a public road or public area, with the exception of his or her motor vehicle or trailer from which trade is conducted, provided that such vehicle or trailer does not obstruct pedestrian of the National Traffic Act, 1996;

(d) must ensure that his or her property or area of activity-

(i) does not cover an area of a public road, or a public place which is greater than 6 (six) square metres (with a maximum length of 3 (three) metres) in extent, unless otherwise approved by the municipality; and

(ii) in respect of any sidewalk, leaves an unobstructed space for pedestrian traffic, being not less than 1.5 (one and a half) metres wide when measured from any contiguous building to the property or area of activity, and not less than 0.5 (one half) metres wide when measured from the kerb line to the property or area of activity;

(e) may not trade on a sidewalk where the width of such sidewalk is less than 3 (three) metres;

(f) may not place or stack his or her property in such a manner that it constitutes a danger to any person or property, or is likely to injure any person, or cause damage to any property;

(g) may not display his or her goods or other property on or in a building, without the consent of the owner, lawful occupier, a person in control of such building or property;

(h) must, on request by an authorised official or supplier of telecommunication or electricity, or other municipal services, move his or her property so as to permit the carry out of any work in relation to a public road, public place, or any such services;

(i) may not attached any of his or her property by any means to any building, structure, pavement, 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 place;

(j) may not carry on such business in such a manner as to-

(i) create a nuisance;

(ii) damage or deface the surface of any public road or public place, or any public or private property; or

(iii) create a traffic or health hazard, or health risk, or both;

(k) may not make an open fire on a public road or public place;

(l) may not interface 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) may not obstruct access to a pedestrian crossing, a parking or loading bay, or other facility for vehicular or pedestrian traffic;

(n) may not obstruct access to, or the use of, street furniture and any other facility designed for the use of the general public;

(o) may not obscure any road traffic sign displayed in terms of the National Road Traffic Act, 1996, or any marking, notice or sign displayed or made in terms of this by-law;

(p) may not carry on business, or take up a position, or place his or her property on a portion of a sidewalk or public place, in contravention of a notice or sign erected or displayed by the municipality for the purposes of this by-law;

(q) may not, other than in a refuse receptacle approved or supplied by the municipality, accumulate, dump, store, or deposit, or cause or permit to be accumulated, dumped, stored or deposited, any litter on any land or premises or any public road or public place or on any public property;

(r) may not place, on a public road or public place, such of his or her property that is not capable of being easily removed to a storage place away from such public road or public place, at the end of the day's business;

(s) must, on concluding business for the day, remove his or her property, except any structure provided or approved by the municipality, to a place which is not part of a public road or public place;

(t) may not store his or her property in a manhole, storm water drain, public toilet, bus shelter or tree; and

(u) may not carry on such business in a place or area in contravention of any prohibition or restriction approved by the municipality.

6. Cleanliness

A street trader must-

(a) keep the area or site occupied by him or her for the purpose of such 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 municipality for the public, or at a dumping site of the municipality;

(d) not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;

(e) ensure that an completion of business for the day, the area or side occupied by him of her for the purposes of trade is free of litter;

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

(g) ensure that no smoke, fumes or other substance, odours, or noise, emanating from his or her activities, causes her pollution of any kind; and her activities, causes pollution of any kinds; and

(h) on request by an authorised official, move his or her property, so as to permit the cleaning of the space, or the area or side where he or she is trading, or the effecting of municipal services.

7. Sign indicating restricted and prohibited areas

(1) The municipality may, by resolution, declare any place in its area or jurisdiction to be an area in which street trading is restricted or prohibited, and must, to enable compliance therewith, prescribe, or make, signs, markings or other devices indicating-

(a) specified hours, goods and services in respect of which street trading is restricted or prohibited;

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

(c) any other restriction or prohibition against street trading with regard to the area in question.

(2) The municipality must 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 concerned.

(3) Any sign erected in terms of this by-law or the Act shall serve as sufficient notice to a street trader, of the prohibition or restriction in respect of the area concerned.

(4) Any sign may be amended from time to time and displayed by the municipality for the purpose of this by-law, and shall have the same effect as a road sign in terms of the National Road Traffic Act, 1996.

8. Leasing of verger

(1) The municipality may, by resolution,

(a) lease any verge, or any portion thereof, the owner or occupier of the contiguous land, on the owner or occupier shall admit a specified number of street traders in stands or places on such verge designed by such owner or occupier;

(b) set apart and demarcate stands or areas for the purpose of street trading or any public road, the ownership or management of which is vested in the municipality, or on any other property in the occupation and under the control of the municipality;

(c) extend, reduce or disestablish and stand or area referred in the previous subsections; and

(d) let or otherwise allocate any such stand or area.

(2) Any such stands or areas may be extended, reduced or disestablished, by resolution of the municipality.

9. Removal and impoundment

(1) An official who reasonably suspects that property is being used or intended to be used in, or in connection with, street trading, whether or not the property is in possession or under the control of any person may, subject to subsection (2), remove and impound the property which he or she finds at a place where street trading is restricted or prohibited and which constitutes an infringement of any such restriction or prohibition.

(2) An official who acts under subsection (1) must, except in the case of goods that have been left or abandoned, issue to the street trader a receipt for the property so removed and impounded and the receipt must contain the following particulars:

(a) the address where the impounded property will be kept and the period it will be kept;

(b) the conditions for the release of the impounded property; and

(c) that unclaimed property will be sold by public auction.

(3) If any impounded property is attached to immovable property or a structure, and the impounded property is under the apparent control of a person present at that place, an official may order the person to remove the impounded property.

(4) When a person fails to comply with an order to remove the impounded property, an official may take such steps as may be necessary to remove the impounded property.

(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. Impoundment of goods

(1) Any perishable goods removed and impounded may at any time after the impoundment thereof be sold or destroyed by the municipality and in the case of a sale of such goods, the proceeds thereof, less any expenses incurred by the municipality in connection with the removal and impoundment thereof. The balance thereof is to be paid to the person who was the owner thereof when it was impounded. If such owner fails to claim the said proceeds within three months of the date on which it was sold, the proceeds may be forfeited to the municipality.

(2) The owner of any goods other than perishable goods already dealt with by the municipality in terms of subsection (1) who wishes to claim the return thereof must, within a period of one month of the date of the impoundment thereof, apply to the municipality; failing which the goods may be sold by the municipality and in the event of a sale thereof the provisions of subsection (1) relating to the proceeds of a sale likewise apply to the proceeds of the sale.

(3) If the owner of any goods impounded claims the return of the goods from the municipality and he or she is unable or refuses to refund any expenses incurred by the municipality in connection with the removal and impoundment, the goods may be sold by the municipality and the proceeds of any sale thereof, less any expenses shall be paid to him or her.

(4) In the event of the proceeds of any sale of goods contemplated by this section not being sufficient to defray any expenses incurred by the municipality, the owner thereof shall remain liable for the difference.

11. Duty and liability of the municipality

(1) In the event that an authorised official removes and impounds any property in terms of the preceding section, the authorised official shall take reasonable steps to ensure that such property is not damaged or lost.

(2) The municipality shall not be liable for any damage or loss caused to any such property that is removed and impounded, unless such damage or loss is caused as a result of the negligence of the municipality.

12. Vicarious responsibility of persons carrying on business

(1) When an employee or agent of a street trader contravenes a provision of this by-law, the street trader shall be deemed to have committed such contravention him- or herself unless such street trader satisfies the court that he or she took reasonable steps to prevent such contravention.

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

13. Offences and penalties

(1) Any person who -

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

(b) fails to comply with any notice issued in terms of this by-law;

(c) fails to comply with any lawful instruction given in terms of this by-law; or

(d) who obstructs or hinders any authorised official in the execution of his or her duties under this by-law - is guilty of an offence, and liable, on conviction, to a fine not exceeding R5 000 or, in default of payment, to imprisonment for a period not exceeding 3 (three) months, and in the case of a continuing offence, to a further fine not exceeding R50 or, in default of payment, to imprisonment not exceeding one day, for every day during the continuation of such offence, after written notice has been issued by the municipality and served on the person concerned, requesting the discontinuation of such offence.

(2) An admission of guilt fine may be paid by any person in respect of whom a summons or written notice has been issued for any contravention of this by-law, as contemplated in terms of Sections 56 and 57 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

14. Responsible person

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 himself 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.

15. 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.

16. Liason 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 of members of an interest group, or an affected person;

(b) a member or members of a community in whose immediate area commonage has been established;

(c) a designated official or officials of the municipality; and

(d) a councillor.

(3) 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.

17. Application of by-law

This by-law shall be binding on all persons who own or occupy premises within the jurisdiction of the municipality.

Not commenced; Repealed

18. Regulations

(1) The municipality may make regulations regarding-

(a) the provision or approval of any structure for purposes of providing shelter;

(b) the declaration of any place to be an area in which street trading is restricted or prohibited, and the prescription or making of signs, markings or other devices;

(c) the leasing of any verge or any portion thereof, and the setting apart, demarcation, letting or allocation of stands or areas for the purposes of street trading, and the extension, reduction or disestablishment thereof;

(d) (i) the disposal of any property which has been removed and impounded;

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

(e) (i) the prescription of penalties for the offences;

(ii) the issuing of any summons or written notice and payment of an admission of guilt fine; and

(iii) the amendment of such penalties or fines from time to time;

(f) 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) The municipality shall, not less than 1 (one) month before promulgating a regulation 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 municipality to issue such a regulation and inviting comments or representations.

(3) if the municipality decides to alter the draft regulation as a result of comments or representations received pursuant to such invitation, then it shall not be necessary to communicate and make public the alteration before the amended draft is promulgated as a regulation.

(4) In addition the municipality may make regulations regarding-

(a) any matter required, or permitted, to be prescribed in terms of this by-law; and

(b) generally, all matters which, in the reasonable opinion of the municipality, are necessary, or expedient, to be prescribed, in order to achieve the objects of this by-law.

19. Repeal of by-laws

Any by-laws relating to street trading adopted by the municipality or any erstwhile municipal council now comprising an administrative unit of the municipality shall be repealed from the date of promulgation of this by-law.

20. Short title

This by-law is called the Street Trading By-law, 2016, and takes effect on a date determined by the municipality by proclamation in the Provincial Gazette.