

## **MSUKALIGWA MUNICIPALITY**

### **BY-LAW**

#### **STREET TRADING**

In terms of section 156 of the Constitution of the Republic of South Africa, Msukaligwa Municipality has adopted the Street trading by law per resolution LM 1512/02/04

#### **Interpretation**

1. (1) In these by-laws, unless the context otherwise indicates:
  - (i) “authorised official” means an official of the Council authorised to implement the provisions of these by-laws.
  - (ii) “Council” means the Municipality of Msukaligwa.
  - (iii) “garden or park” means a garden or park to which the public has a right of access.
  - (iv) “goods” includes live stock, merchandise, food or any other products which are traded with.
  - (v) “litter” includes any container of other matter which has been discarded, abandoned or left behind by a person trading or his customers.
  - (vi) “national monument” means a building declared to be a national monument under the National Monuments Act 1969 (Act no 28 of 1969).
  - (vii) “prohibited area” means any place declared or to be declared by resolution of the Council to be an area in which street trading may not be promoted.
  - (viii) “property” in relation to a person carrying on the business of street trading, means any article, receptacle, vehicle or structure used or intended to be used in connection with such business, and includes goods in which he trades.
  - (ix) “public place” means a building, occupied solely by the State or the Council.
  - (x) “public building” means a public place as defined in Section 2 of the Local Government Ordinance, 1939 (Ordinance 17 of 1939).
  - (xi) “public road” means a public road as defined in Section 1 of the Road Traffic Act, 1996 (Act no. 93 of 1996).

(xii) “restricted area” means any place declared under Section 6A(2) of the Act by resolution of the Council to be an area in which street trading may be restricted.

(xiii) “sell” includes supply to and also-

- (a) exchange or hire;
- (b) store, expose, offer or prepare for sale.

(xiv) “services” includes any advantage or gain for consideration or reward.

(xv) “sidewalk” means a sidewalk as defined in Section 1 of the Road Traffic Act, 1996 (Act no. 93 of 1996).

(xvi) “the Act” means the Mpumalanga Business Act 1996 (Act no. 2 of 1996).

(xvii) “trade” means selling of goods or services on or services on or next to a public road, any public place and “trading” has a corresponding meaning.

(xviii) “verge” means a verge as defined in Section 1 of the Road Traffic Act, 1996 (Act no. 93 of 1996), and any word or expression to which a meaning has been assigned in the Mpumalanga Business Act. 1996 (Act no. 2 of 1996).

(2) For the purpose of these by-laws a single act of selling on a public road or public place shall constitute trading.

### **Freedom to Trade**

2. 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 to the areas as set out in the schedules of these by-laws and the necessary permits are obtained as specified in the Schedules.

### **General Conduct**

3. A person shall-
  - (a) not place his property on a verge in a public place except for the purpose to commence trade as to the areas as set out in the schedules of these by-laws.
  - (b) ensure that his property does not cover an area of a public road or public place which is greater in extent than three metres long or two metres wide.
  - (c) not place or stack his property in such a manner that it constitutes a danger to any person or is likely to injure any person or damage any property.

- (d) not obstruct access to a fire hydrant.
- (e) on concluding business for the day, remove his property to a place which is not part of a public road or public place.
- (f) not display his goods or other property on or in a building or other private property without the consent of the owner, occupier or person in control of such building or property.
- (g) on request by an employee or agent of the Council or any supplier of telecommunication electricity or other service on Council property so as to permit the carrying out of any duties in relation to a public road, public place or any such service to remove his goods.
- (h) not attach any object by any means to any building, structure, pavement, tree, parking meter, lamp post, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public place.
- (i) not make a fire at a place or in circumstances where it could harm any private or public property or person or damage a building or vehicle or any street furniture referred to in paragraph (j).
- (j) not store his property in a manhole or storm water drain.

### **Cleanliness**

4. A person trading shall-
- (a) keep the area or site occupied by him for the purpose of such business in a clean and sanitary condition.
  - (b) keep his property in a clean and sanitary condition.
  - (c) properly dispose litter generated by his business.
  - (d) not dispose 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 for the purpose of trade is free of litter.
  - (f) in the case of a vendor of foodstuffs, take such precautions as may be necessary to prevent the spilling onto a public road or public place of any fat, oil or grease in the course of conducting his business and to prevent any smoke, fumes or odours emanating from his activities from becoming a nuisance.

- (g) on request by an employee or agent of the Council, move his property so as to permit the cleanliness of the surface of the area or site where he is trading.
- (h) make sure that he has the necessary permits where applicable and comply to the permit's conditions.

### **Obstruction of Pedestrians**

5. No person shall trade at a place-
- (a) where it obstructs access to street furniture such as a bus passenger bench or shelter or queuing line, refuse disposal bin or other facility intended for the use of the general public.
  - (b) where it obstructs the visibility of a display window in business premises, if the person carrying on business in the premises concerned objects thereto.
  - (c) where it obstructs access to an entrance to or exit from a building or automatic bank teller machine.
  - (d) where it obstructs access to a pedestrian crossing.
  - (e) where it obstructs access to any vehicle.
  - (f) where it leaves less than two metres in width of a sidewalk clear for pedestrian traffic.
  - (g) where it in any other manner substantially, obstructs pedestrians in their use of a sidewalk.
  - (h) where in the municipal area of the Msukaligwa Municipality, except if he is in possession of a permit issued by the Municipality and in the area as set out in the schedules of these by-laws.

### **No Trading, Prohibited Areas And Obstruction Of Vehicle Traffic**

6. No person shall trade at a place as set out in schedule A and where-
- (a) it causes an obstruction on a roadway.
  - (b) it limits access to parking or loading bays or other facilities for vehicular traffic.
  - (c) it obscures any road traffic signs or any marking, notice or sign displayed or made in terms of these or any other by-laws, or
  - (d) it interferes in any way with any vehicle that may be parked alongside such place.

### **Trading Restriction in Certain Places**

7. No person shall trade-
- (a) on a verge contiguous to any place of worship, national monument or public building, or
  - (b) in a restricted area, which is specified in Schedule A outside the hours so specified in relation to each such garden, park, verge or area.

### **Trading Restricted To Demarcated Stands on Areas in Certain Places**

8. No person shall trade outside a stand or area set apart for trading purposes as contemplated in Section 6A(3)(b) of the Act in a restricted area.

### **No Trading in stands or areas which have been let except by the Lessee**

9. If the Council has let or otherwise allocated any stand or area set apart or otherwise established for street trading purposes, as contemplated in section 6A(3)(c) of the act, no person may trade in such area if such person is not in possession of proof that such person has hired such stand or area from the Council or that it has otherwise been allocated accordingly.

### **Signs Indicating Restrictions and Areas**

10. The Council may-
- (a) prescribe signs, markings or other devices 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 Section 6A(3)(b) of the Act.
    - (iv) the fact that any such stand or area has been let or otherwise alienated.
    - (v) any restrictions or prohibition against trading in terms of these by-laws, 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 of the location or boundaries of the area or stand concerned.

### **Trading Near Residential Buildings**

11. No person shall, inside an area specified in Schedule A, trade in that half of a public road contiguous to a building used for residential purposes if-
- (a) the owner, person in control or occupier of any part of the building facing onto such road has objected thereto, and
  - (b) the fact that such objection was made has been made known to the first-mentioned person by an authorised official.

### **Trading Near Certain Business Premises**

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

### **Removal and Impoundment**

13. (1) An officer may remove and impound any goods, article, receptacle, vehicle or structure-
- (a) which he reasonably suspects is unlawfully being used or intended to be used or has been used in or in connection with street trading, and
  - (b) which he finds at a place where street trading is restricted or prohibited in terms of Section 4 to 12 inclusive and which in his opinion, constitutes an infringement of any such section.
- (2) The disposal of any goods, article, receptacle, vehicle or structure be removed and impounded as contemplated in subsection (1), and the liability of any person for the expenses incurred in connection with such removal, impoundment and disposal, shall be in accordance with the regulations prescribed by the MEC under Section 6(1)(b) of the Act.

### **Presumptions**

14. (1) In any prosecution for an offence under these by-laws, an allegation in the charge concerned that-
- (a) any goods with which a business was carried or was not of particular kind, class, type or description.
  - (b) any goods was sold or offered for sale.

- (c) any place was situated on a public road or in a public place or within a particular area.
- (d) any person carried on the business of street trading and in a manner and place as alleged.

(2) In any criminal proceedings for a contravention of these by-laws, where it indicates that-

- (a) any goods were displayed on a public road or public place, such goods shall be presumed to have been offered for sale.
- (b) any property used in the provision of any service was available in a public road or public place, such services shall be deemed to have been offered for supply.

### **Offences**

15. Any person who contravenes a provision of these by-laws shall be guilty of an offence and can be prosecuted.

### **Penalties**

16. Any person who is guilty of an offence in terms of these by-laws on conviction be liable to a fine not exceeding R1 000.00, or to imprisonment for a period not exceeding three months.

### **Vicarious Responsibility of Persons Carrying on Business**

17. When an employee of a person conducting the business of street trading does or omits to do any act which constitutes an offence in terms of these by-laws or that person to do or omit to do, such person shall be deemed to have done or omitted to conduct business in terms of this by-law, unless he satisfies the court that-
- (a) he neither connived with, nor permitted the act or omission by the employee concerned.
  - (b) he 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 circumstance fell within the scope of the authority of employment of the employee concerned, and the fact that the said person issued instructions whereby an act or omission of that nature is prohibited, shall not in itself be sufficient proof that he took all reasonable steps to prevent the act or omission.

### **Repeal of By-Laws**

18. Existing by-laws are hereby repealed.

19. This bylaw will take effect on day of publication.

## **SCHEDULE A**

### **RESTRICTION IN RESPECT OF TRADING**

1. **Places**
  - (a) Gardens and parks.
  - (b) Verges contiguous to the following - places of worship, national monuments and public buildings
  - (c) Restricted areas, as determined by Council.
2. No trading may take place on any public road.

## **SCHEDULE B**

### **AREAS OF TRADING WITH A PERMIT**

1. An applicant may apply for a trading permit, if available, as determined by Council from time-to-time.
2. No area will be approved by Council as a trading area, unless:
  - 2.1 Notice is placed in the local newspaper of such proposed area to be considered, stating:
    - (i) the area to be considered;
    - (ii) that any person who desires to object to such area shall do so in writing within 14 days after the date on which the notice is first displayed.
  - 2.2 Where no objection is lodged Council's resolution will be binding.
  - 2.3 If an objection is lodged within the period referred in section 2.1 (ii) the Municipal Council shall consider every objection, before a resolution is taken on the area to be a trading area or not, whereafter such resolution will be binding.
3. An applicant applying for a trading permit must apply in writing and will be notified within 30 days by the authorised official of the outcome of such appeal.