

LOCAL GOVERNMENT NOTICE

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MUNICIPALITY OF NKONKOBE

STREET TRADING BY-LAW

The Municipal Manager hereby publishes in terms of Section 13 of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000], read with Section 162 of the Constitution of the Republic of South Africa Act, 1996 [Act No. 108 of 1996], the Street Trading By-law.

Purpose of By-law

The purpose of this by-law is to regulate street trading, for the benefit of the public residing and carrying on business within the municipal boundaries of the municipality.

1. **Definitions** – In this by-law, words used in the masculine gender include the feminine, the singular includes the plural and vice versa, and, unless the context otherwise indicates -

"approval" means approval by the municipality, and "approved" shall have a corresponding meaning;

"authorised official" means –

- (a) an official of the municipality who has been authorised by it to administer, implement and 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 Service 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];

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

"goods" means any movable property, and includes a living thing;

"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 a kerb line as defined in Section 1 of the National Road Traffic Act, 1996;

"litter" includes any receptacle, container, or other matter, which has been discarded, abandoned, or left behind, by a street trader, or by his or her customers;

"motor vehicle" means a motor vehicle as defined in Section 1 of the National Road Traffic Act, 1996;

"municipal services" means any system conducted by or on behalf of a local authority, for the collection, conveyance, treatment or disposal of refuse, sewage or storm water, or for the generation, impounding, storage, purification or supply of water, electricity or other services;

"municipal service works" means all property or works of whatever nature necessary for or incidental to any municipal services;

"municipality" means the Municipality of Nkonkobe, established in terms of Section 12 of the Local Government: Municipal Structures Act, 1998 [Act 117 of 1998], and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated to such political structure, political office bearer, councillor, agent or employee;

"prescribed" means determined, from time to time, by resolution of the municipality;

"property", in relation to a street trader, means any article, container, vehicle or structure used, or intended to be used, in connection with such business, and includes goods in which he or she trades;

"public building" means a building belonging to, or occupied solely by, any sphere of the government, including the municipality;

"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 municipality or to which the public has the right to use,

or which is shown on a general plan of a township filed in the deeds registry or a 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;

"roadway" means a roadway as defined in Section 1 of the National Road Traffic Act, 1996;

"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, 1996;

"street furniture" means any furniture installed by the municipality on the street, for public use;

"street trader" means a person who carries on the business of street trading, and includes any employee of such person;

"street trading" means the selling of any goods or the supplying or offering to supply of any service for reward, in a public road, or public place, by a street trader;

"the Act" means the Businesses Act, 1991 [Act No. 71 of 1991], and includes the regulations promulgated thereunder; and

"verge" means a verge as defined in Section 1 of the National Road Traffic Act, 1996;

2. Meaning of words and expressions in Businesses Act incorporated in this by-law

Unless the context otherwise indicates, any words or expressions to which a meaning has been assigned in the Businesses Act, 1991 [Act No. 71 of 1991] shall have a corresponding meaning in this by-law.

3. Single act constitutes street trading

For the purpose of this by-law, a single act of selling or offering or rendering of services in a public road or public place shall constitute street trading.

4. Reference to legislation includes regulations made thereunder

For the purpose of this by-law, a reference to any legislation shall be a reference to that legislation and the regulations promulgated thereunder.

5. Assigning responsibilities of a municipal employee to an employee of a service provider, where a service provider has been appointed

If any provision in this by-law imposes any responsibility of the municipality in or on an employee of the municipality and such responsibility has, in terms of Section 76(b) of the Local Government: Municipal Systems Act, 2000 [Act No. 32 of 2000] or any other law, been assigned to a service provider, then the reference in such a provision to such employee must be read as a reference to the service provider or a duly authorised employee of the service provider.

6. 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 in terms of Section 6A(2)(a) of the Act 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 autoteller 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 in terms of Section 6A(3)(b) of the Act, 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 on 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, as contemplated in terms of subsection (1)(h), may not trade in contravention of the terms and conditions of such lease or allocation.

7. 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 place, 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 or vehicular traffic movement and complies with the provisions of the National Road 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, or person in control of such building or property;
- [h] must, on request by an authorised official or supplier of telecommunications or electricity, or other municipal services, move his or her property so as to permit the carrying out of any work in relation to a public road, public place, or any such service;
- [i] may not attach any of his or her property by any means to any building, structure, pavement, tree, parking meter, lamp, pole, electricity pole, telephone booth, postbox, 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 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] 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 in terms of Section 6A(2)(a) of the Act.

8. Cleanliness

A street trader must -

- [a]** keep the area or site occupied by him or her for the purposes 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 on completion of business for the day, the area or site occupied by him or her for the purposes of trade 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 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 pollution of any kind; and,
- [h]** on request by an authorised 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 trading, or the effecting of municipal services.

9. Signs indicating restricted and prohibited areas

- [1]** The municipality may, by resolution, and in terms of Section 6A(2) of the Act, declare any place in its area of 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 or 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.

10. Leasing of verge and designation of stands or areas for purposes of street trading

- [1]** The municipality may, by resolution, and in terms of Section 6A(3)(a) to (c) of the Act –
- [a]** lease any verge, or any portion thereof, to the owner or occupier of the contiguous land, on the condition that such owner or occupier shall admit a specified number of street traders in stands or places on such verge designated by such owner or occupier;
 - [b]** set apart and demarcate stands or areas for the purposes of street trading on 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 any 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.

11. Removal and impoundment

- [1]** An authorised official may remove and impound any property of a street trader which -
- [a]** he or she reasonably suspects is being used, or which is intended to be used, or has been used, for or in connection with street trading; and
 - [b]** is found at a place where street trading is restricted or prohibited.
- [2]** The removal and impoundment of property in terms of subsection [1] may be effected irrespective of whether or not such property is in the possession or under the control of any third party at the time.
- [3]** Any authorised official acting in terms of subsection [1] must, except where goods have been left or abandoned, issue to the person carrying on the business of a street trader, a receipt for any property so removed and impounded, which receipt must -
- [a]** itemise the property to be removed and impounded;
 - [b]** provide the address where the impounded property will be kept, and the period of such impoundment;
 - [c]** state the terms and conditions for the release of the impounded property;

[d] state the terms and conditions relating to the sale of unclaimed property by public auction; and

[e] provide the name and contact details of a municipal official to whom any representations regarding the impoundment may be made, and the date and time by which this must be done.

[3] If any property about to be impounded is attached to any immovable property or structure, and such property or structure is under the apparent control of a person present thereat, then any authorised official may order such person to remove the property, and if such person refuses or fails to comply, then he or she shall be guilty of an offence.

[4] When any person fails to comply with an order to remove the property referred to in subsection [3], any authorised official may take such steps as may be necessary to remove such property.

12. Duty and liability of municipality with regard to removal and impoundment

[a] 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.

[b] 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.

13. Vicarious responsibility of persons carrying on business

[a] 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.

[b] 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.

14. 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].

15. Regulations

- [1]** The municipality may make regulations regarding –
 - [a]** the provision or approval of any structure for purposes of providing shelter, as contemplated in terms of section 7(b) and (s);
 - [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, as contemplated in terms of section 9;
 - [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, as contemplated in terms of section 10;
 - [d]**
 - [i]** the disposal of any property which has been removed and impounded, as contemplated in terms of section 11; and
 - [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 contemplated in terms of section 14(1);

- [ii] the issuing of any summons or written notice and payment of an admission of guilt fine, as contemplated in terms of section 14(2); 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] [a] 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.
 - [b] 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.

16. Repeal of by-laws

Any by-laws promulgated by the municipality or any erstwhile municipal council now comprising an administrative unit of the municipality, and pertaining to any matter regulated in this by-law, shall be repealed from the date of promulgation of this by-law.

17. Short title

This by-law is called the Street Trading By-law, 2004, and takes effect on a date determined by the municipality by proclamation in the Provincial Gazette.