

The Council of Okhahlamba Local Municipality has in terms of section 156 of the Constitution, 1996 (Act No. 108 of 1996), read in conjunction with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), read together with section 6A (1) of the Business Act, 1991 (Act No. 71 of 1991), made the following By-laws which By-laws shall come into operation on the date of publication of this notice.

OKHAHLAMBA LOCAL MUNICIPALITY

STREET TRADING BY-LAWS

1. DEFINITIONS

- (1) In these By-laws, except as otherwise expressly provided or unless the context otherwise requires—

"approval" means approval by the authorised official and "approve" has a corresponding meaning;

"association" means persons who are self-employed and have organised themselves into a street trader association with a constitution and a code of conduct;

"authorised official" means an official of the Council to whom it has delegated a duty, function or power under these By-laws, in relation to the exercise or performance of that duty, function or power and includes any employee acting under the control and direction of such official;

"Council" means the Council of the Okhahlamba Local Council and includes, in relation to a duty, function or power under these By-laws, a committee or official of the Council to whom it has delegated that duty, function or power;

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

"local authority service works" means all property or works of whatsoever nature necessary or desirable for or incidental to any local authority service;

"nuisance" bears the meaning given to it by the Ordinance, or any amendment thereof;

"Ordinance" means the Local Authorities Ordinance, 25 of 1974, or any amendment thereof;

"prescribed" means prescribed by the Council by resolution;

"property" in relation to a street trader, means any goods, receptacle, vehicle or movable structure used or intended to be used in connection with the carrying on of his business as such;

"public place" means a public place as defined in section 1 of the Ordinance, or any amendment thereof;

"prescribed" means prescribed by the Council by resolution;

"public road" means a public road as defined in section 1 of the Road Traffic Act, 1996 (Act No. 93 of 1996);

"roadway" means a roadway as defined in section 1 of the Road Traffic Act, 1996 (Act No. 93 of 1996);

"sell" includes—

- (a) barter, exchange or hire;
- (b) display, expose, offer or prepare for sale;
- (c) store with a view to sell; or
- (d) provide a service for reward and "sale" has a corresponding meaning;

"sidewalk" means a sidewalk as defined in section 1 of the Road Traffic Act, 1996 (Act No. 93 of 1996);

"street trader" means a person who carries on the business of street trading;

"street trading" means the selling of any goods or the supplying or offering to supply any service for reward, as a street vendor, peddler or hawker in a public road or public place but does not include the sale of newspapers only;

"the Act" means the Business Act, 1991 (Act No. 71 of 1991), and includes the regulations made thereunder;

"vehicle" includes—

- (a) a self-propelled vehicle;
- (b) a trailer;
- (c) a hand-drawn or propelled vehicle; and

"verge" means a verge as defined in section 1 of the Road Traffic Act, 1996 (Act No. 93 of 1996).

- (2) In these By-laws, unless the context otherwise indicates, any word or expression defined in the Act shall bear the meaning so given to it.
- (3) For the purpose of these By-laws a single act of offering for sale or of selling goods or services in or from a public road or public place constitutes the carrying on of the business of a street trader.
- (4) For the purpose of these By-laws a reference to a person carrying on the business of street trader shall include any employee of any such person.
- (5) Words applying to any individual shall include persons, companies and corporations, and the masculine gender shall include females as well as males, and the singular number shall include the plural and *wee versa*.

2. APPLICATION

No person shall carry on the business of a street trader unless he or she—

- (1) has obtained the written approval of the Council to do so; and
- (2) is a member of a street trader association recognised by the Council.

3. PROHIBITIONS

No person shall carry on the business of a street trader—

- (1) at a place or in an area declared under section 6A(2) (a) of the Act as a place or area in which the carrying on of street trading is prohibited;
- (2) on a verge, contiguous to—
 - (a) a building belonging to, or occupied solely by the State or the Council;
 - (b) a church or other place of worship; or
 - (c) a building declared to be a national monument under the National Monument Act, 1969 (Act No. 28 of 1969), or any amendment thereof except to the extent that the carrying on of such business is permitted by a notice or sign erected or displayed by the Council and in compliance therewith;
- (3) on a verge contiguous to a building in which business is being carried on by any person who solely or mainly sells goods of the same or similar nature as goods being sold by the street trader concerned, without the consent of that person;
- (4) 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 the building objects thereto;
- (5) at a place where it substantially obstructs pedestrians in the use of a sidewalk or take up a position or deposit his property on a sidewalk so as to do so;
- (6) at a place where it causes an obstruction to vehicular traffic;
- (7) at a place where it causes an obstruction in front of—
 - (a) an entrance to or exit from a building;
 - (b) a fire hydrant;
- (8) on a stand or in any area contemplated in section 6A(3) (b) of the Act if he is not in possession of proof that he has hired such stand or area from the Council or that it has otherwise been allocated to him;
- (9) in contravention of the terms and conditions of the lease or allocation to him of a stand or area contemplated in sections 6A(3)(b) and (c) of the Act.

4. RESTRICTIONS

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

- (a) if such business is carried on any public road or public place—
 - (i) sleep overnight at the place of such business; or
 - (ii) erect any permanent structure at the business site for the purpose of providing shelter without prior written approval of the Council;
 - (b) carry on such business in such a manner as to—
 - (i) create a nuisance;
 - (ii) damage or deface the surface of any public place or any public or private property; or
 - (iii) create a traffic hazard;
 - (c) other than in a refuse receptacle approved or provided by the Council, accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any litter on any land or premises or on any public road or public place;
 - (d) obstruct access to a service or to service works of the Council or of the State or any statutory body;
 - (e) interfere with the ability of persons using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
 - (f) obstruct access to a pedestrian arcade or mall;
 - (g) carry on business or take up a position or place his property on a portion of a sidewalk or public place in contravention of a notice or sign erected or displayed by the Council for the purpose of these By-laws;
 - (h) carry on such business in a place or area in contravention of any restriction imposed by Council resolution in terms of section 6A(2)(a) of the Act;
 - (i) obstruct access to pedestrian crossings, parking or loading bays or other facilities for vehicular or pedestrian traffic;
 - (j) obstruct access to or the use of street furniture such as bus passenger benches or shelters and queuing lines, refuse disposal bins, and other facilities designed for the use of the general public; or
 - (k) obscure any road traffic sign displayed in terms of the Road Traffic Act, 1996 (Act No. 93 of 1996), and regulations made thereunder or any marking, notice or sign displayed or made in terms of these By-laws.
- (2) The Council shall reserve the right to restrict the number of street traders and street trader associations.
- (3) Words applying to any individual shall include persons, companies and corporations, and the masculine gender shall include females as well as males, and the singular number shall include the plural and *vice versa*.

5. CLEANLINESS OF PLACE OF BUSINESS AND PROTECTION OF PUBLIC HEALTH

Every street trader shall—

- (1) unless prior written approval exempting him from the provisions of this paragraph has been given by the Council, daily remove from any public road or public place at the end of each trading day or at the conclusion of trading all goods, moveable structures, waste, packaging material, stock and equipment of whatsoever nature which are utilised in connection with such trading;
- (2) carry on this business in such a manner as not to be a danger or threat to public health or public safety;
- (3) at the request of an officer or an employee of the Council move or remove anything so that the place of business may be cleaned;
- (4) keep the area or stand occupied by him for the purpose of his business as well as his property in a clean and sanitary condition and free of litter; or
- (5) if his activities involve the cooking or other preparation of food, take steps to ensure that no fat, oil or substance drops or overflows onto the surface of a sidewalk or splashes against a building or other structure.

6. DESIGNATED STREET TRADING AREAS

- (1) No street trader shall carry on business in a garden or park to which the public has the right of access except with the prior written approval of the Council's Municipal Manager or other authorised official and in compliance with any conditions imposed by him when granting such consent.
- (2) No street trader shall carry on business outside a designated street trading area as determined by the Council, per resolution, from time to time.

7. OBJECTS USED FOR DISPLAY OF GOODS

A street trader shall ensure that any structure, container, surface or other object used by him for the preparation, display, storage, or transportation of goods—

- (1) is maintained in a good state of repair and in a clean and sanitary condition; and
- (2) is not so placed or stacked so as to constitute a danger to any person or so as to be likely to injure any person.

8. REMOVAL AND IMPOUNDMENT

- (1) For the purpose of this By-law "goods" includes any receptacle, vehicle or movable structure.
- (2) An officer may remove and impound goods—
 - (a) which he reasonably suspects are being used or are intended to be used or have been used in or in connection with the carrying on of any business of a street trade, and

- (b) which he finds at a place where the carrying on of such business is restricted in terms of section 4(h) or section 5 or prohibited in terms of sections 3(1) to (9) and which in his opinion constitutes an infringement of such provision, whether or not such goods are in the possession or under the control of any person at the time of such removal or impoundment.
- (3) Any officer acting in terms of subsection (2) shall—
 - (a) except in the case of goods which have been left or abandoned, issue to the person carrying on the business of street trader a receipt of any goods so removed and impounded; and
 - (b) forthwith deliver any such goods to the authorised official.
- (4) Neither the Council nor a councillor, official, officer or employee of the Council shall be liable for any loss of or damage to any goods removed and impounded in terms of this section.

9. DISPOSAL OF IM POUNDED GOODS

- (1) Any perishable goods removed and impounded in terms of section 8(2) may at any time after the impoundment thereof be sold or destroyed by the Council and in the case of a sale of such goods the proceeds thereof, less any expenses incurred by the Council in connection with the removal, impoundment and sale of such goods, shall, upon presentation of the relevant receipt issued in terms of section 8(3)(a), be paid to the person who was the owner of such goods when such goods were impounded. If such owner fails to claim the said proceeds within three months of the date on which such goods were sold, such proceeds shall be forfeited to the Council.
- (2) The owner of any goods (other than perishable goods), dealt with by the Council in terms of subsection (1), impounded in terms of section 8(2) who wishes to claim the return of such goods shall, within a period of one month of the date of the impoundment of such goods, apply to the Council and shall present the relevant receipt issued in terms of section 8(3)(a), failing which such goods may be sold by the Council and in the event of sale of such goods the provisions of subsection (1) relating to the proceeds of a sale shall apply.
- (3) If the owner of any goods impounded in terms of section 8(2) claims the return of such goods from the Council and such owner is unable or refuses to refund any expenses incurred by the Council in connection with the removal and impoundment of such goods, such goods may be sold by the Council and proceeds of any sale of such goods less any such expenses and the cost of such sale shall be paid to such owner.
- (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 Council in connection with the removal, impoundment and sale of such goods, the owner of such goods shall remain liable for so much of such expenses as is not defrayed by the proceeds of the sale of such goods.

10. GENERAL OFFENCES AND PENALTIES

- (1) Any person who—

- (a) contravenes or fails to comply with any provision of these By-laws;
 - (b) ignores, disregards or disobeys any notice, sign or marking displayed or erected for the purpose of these By-laws;
 - (c) contravenes or fails to comply with any approval or condition granted or imposed in terms of these By-laws;
 - (d) for the purpose of these By-laws make a false statement knowing it to be false in a material respect or deliberately furnishes false or misleading information to an authorised official or officer; or
 - (e) threatens, resists, interferes with or obstructs an authorised official, officer or employee of the Council in the performance of his powers, duties or functions under these By-laws, shall be guilty of an offence and on conviction be liable to a fine of R500.00 (Five Hundred Rand) or imprisonment for a period not exceeding 3 (three) months.
- (2) When an employee of a street trader performs any act or is guilty of any omission which constitutes an offence under these By-laws the employer shall be deemed to have performed the act or to be guilty of the omission himself and he shall be liable on conviction to the penalties mentioned in subsection (1) unless he can prove that—
- (a) in performing the act or being guilty of the omission the employee was acting without his knowledge or permission;
 - (b) all reasonable steps were taken by him to prevent the act or omission; and
 - (c) it was not within the scope of the authority or the course of the employment of the employee to perform an act of the kind in question.
- (3) The fact that an employer issued instructions forbidding any act or omission referred to in subsection (2) shall not of itself be accepted as sufficient proof that he took all steps referred to in paragraph (b) of that subsection.
- (4) When an employer is by virtue of the provisions of subsection (2) liable for anything done or omitted by his employee, then that employee shall also be liable to prosecution for the offence.

11. PRESUMPTIONS

In any prosecution of a street trader for a contravention of these By-laws, the accused shall be deemed to know the provisions of these By-laws and to know that the offence with which he is charged is a contravention thereof.

12. REPEAL OF EXISTING STREET TRADING BY-LAWS

The By-laws relating to Street Trading for the Okhahlamba Local Municipality, are hereby repealed and replaced by these By-laws, which are to become effective on promulgation hereof.