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DEPARTMENT OF HEALTH

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PROVINCIAL NOTICE 100 OF 2017

**MUSINA LOCAL MUNICIPALITY**



**STREET TRADING BY-LAW**

The Municipal Manager of Musina Local Municipality acting in terms of section 13 of the Local Government: Municipal Systems Act, 2000 ( Act 32 of 2000) hereby publishes Street Trading By-Law for the Municipality as approved by its Council.

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### 1. Definitions

In these by-laws, unless the context indicates otherwise:

**“authorized official”** means an official of the Council authorized to implement the provisions of the by-law;

**“council”** means Musina Local Municipality Council;

**“foodstuff”** means any article or substances ordinary eaten or drunk by person 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 at any such article or substance;

**“goods”** means any waste transferable interest but excludes any living thing and hazardous;

**“litter”** means any waste material and includes any container or other matter which has been discarded, abandoned or left behind by a person trading or customers;

**“pavement”** means a sidewalk or that portion of a road reserved for the pedestrians;

**“nuisance”** means any action or behavior by anyone which constitutes a disturbance or causes discomfort to anyone;

**“perishables”** means milk, meat, fish, crustaceans, fruit and vegetables as well as product which require special storage facilities;

**“prohibited area”** means any place declared or to be declared 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 the 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 they trade;

“**public building**” means a building occupied or sold by the State or the Council or any organs of state;

“**public place**” means any square, park, recreation ground, sport ground, sanitary lane or open space;

“**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 the verge of any such roads, street or thoroughfare, any bridge, ferry or drift traversed by such road, street or thoroughfare and 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 by resolution of the Council to be an area in which street trading may be restricted;

“**sell**” means alienation for value and includes supply to and also exchange or hire, store, expose, offer or prepare for sale and “**sale**” has a corresponding meaning;

“**service**” means any advantage or gain for consideration or reward;

“**street trader**” means a person who is mobile or immobile and sells goods for own profit whether such goods are the products of own labour or not; and

“**trade**” and “**trading**” means the lawful sale of goods or services in a public road or public place.

## **2. Purpose**

- (1) To provide for the supervision and control of the carrying on of business of street traders or hawker, formal recognition and regulation of informal trading, promotion of cleanliness, public health and entrepreneurship and the restriction or prohibition.

## **3. Application and allocation of a permit**

- (1) Any person who intends to carry on a business as a street trader or vendor must apply to the Municipal Council in the prescribed manner for the allocation of a stand.
- (2) The council may grant, subject to such conditions or refuse an application.
- (3) If such application is successful, the street trader must, in respect of the allocation of such stand, be given a valid permit which must be produced on the request by an authorized officer.
- (4) If the application is unsuccessful, the municipality must notify the applicant about the disapproval of the application and the applicant's rights in terms of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) and section 62 of the Local Government: Municipal Systems Act( Act 32 of 2000).



- (5) In respect of the allocation, as well as the lease of a stand, a permit shall be issued to the street trader as proof of the person's right to occupy stand for the purpose of carrying on business.
- (6) A street trader must, while carrying on business on the stand, retain such permit ready for display to any authorized officer who may request it.
- (7) Permits are non-transferable.
- (8) No person may conduct trading on municipal property without a valid permit from the municipality.
- (9) The municipality is entitled to charge a permit holder or applicant-
  - (a) an application fee; and
  - (b) a trading fee;
- (10) An additional fee or tariff shall be determined by the council from time to time in respect of additional costs or services provided where the permit-holder trades within a market.
- (11) In the event that a person qualifies for a permit, but has motivated in writing the inability to pay the fee, the municipality may determine a payment system in terms of which the person may pay the fee over a stipulated period by way of instalments.
- (12) In order to qualify for a permit, the applicant-
  - (a) must be intending to be a street trader;
  - (b) must be a South African citizen, failing which, must be in possession of a valid work permit which includes but is not limited to a refugee permit; and
  - (c) must not employ children and actively utilise the services of not more than two persons.
- (13) The municipality must take into account the following factors when considering an application for a permit-
  - (a) the need to give preference to applicants that are historically disadvantaged individuals;
  - (b) where there are limited number of trading bays available in the trading area in respect of which a permit is sought, the need to give preference to applicants that would be new entrants to trading within the municipality;
  - (c) the nature of the trading goods which the applicant intends selling, or the services which the applicant intends rendering, bearing in mind the nature of the businesses within that trading area or in its immediate vicinity;
  - (d) the need to give preference to unemployed applicants; or
  - (e) whether the applicant has, in terms of this by-law committed an offence or had a permit revoked or suspended.
- (14) The municipality is entitled to impose such terms and conditions in respect of permits as it deems fit, subject to the provisions of the applicable trading plan; including but not limited to, the right to-
  - (a) specify the-
    - (i) trading hours during which the permit-holder may trade;

- (ii) nature of the goods or services the permit-holder is permitted to trade; and
  - (iii) permit-holder's trading bay number;
- (b) allocate the street trader an alternative bay in the same trading area;
  - (c) specify the type of structures, if any, which may be erected on a trading bay or in a trading area;
  - (d) impound trading goods in the event of a contravention of this by-law or any other law;
  - (e) on reasonable notice to the street trader and after affording the relevant street trader an opportunity to make oral or written representations, revoke or suspend a permit in the event of a street trader who-
    - (i) breach any provision of the permit or the by-law;
    - (ii) has been convicted of trading illegal or counterfeit goods or providing a service unlawfully; or
    - (iii) wilfully supplying incorrect information when required to provide the municipality with information;
  - (f) upon reasonable prior notice to the street trader and with no compensation payable by the municipality to the permit holder, temporarily-
    - (i) relocate a permit holder;
    - (ii) suspend the validity of a permit; or
    - (iii) prohibit a permit holder from trading at the relevant trading bay should it be necessary to do so because of the performance of activities which renders the continuation of trading from the relevant trading bay impractical or severely inconvenient and such activities shall include, but not limited to, maintenance or construction of infrastructure or building performed by the municipality, property developments, alterations or refurbishments by any entity, or activities by public entities conducted in terms of their powers and functions.

#### 4. General conduct of street traders

- (1) A street trader shall-
  - (a) not place property on a verge or public place except for the purpose of commencing to trade;
  - (b) ensure that the property does not cover an area of a public road, public place, or pavement which is greater in extent than three square meters (3m<sup>2</sup>) unless written permission for a greater area is obtained from the Council;
  - (c) not trade on pavements narrower than 2,5 m;
  - (d) not place or stack property which is likely to injure any person or damage property;
  - (e) not erect any structure for the purpose of providing shelter or sleep over night at the place of business without the prior written approval of the council and where approval is given for a shelter to protect goods, the street trader shall not erect an unsightly structure from which to conduct the business;



- (f) not obstruct access to a fire hydrant or area demarcated solely for the use of emergency vehicle or service;
- (g) on concluding business for the day, remove the 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 the property so as to permit the carrying out of any work in relation to a public road or public place;
- (i) not make an open fire at a place of trading or in circumstances where it could harm a person or damage a building or a vehicle;
- (j) not store the property in manhole or storm water drain, bus shelter, public toilet or trees; and
- (k) not sell goods in a street by using megaphones, radios, loudspeaker, or constantly shouting or singing in a manner which shall constitute a nuisance or disturbance in the area.

#### **5. Cleanliness**

##### **(1) A street trader must-**

- (a) keep property and the area or site occupied for the purpose of such business in a clean and sanitary condition;
- (b) dispose of litter generated by business in whatever receptacles provided thereof 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 for purposes of the trade is free of litter; and
- (d) take such precaution as may be necessary by the council to prevent the spilling onto a public road or public place any fat, oil, grease or any hazardous substances in the course of conducting business and prevent any smoke, fumes, odour, or noise emanating from activities from becoming a nuisance.

#### **6. Obstruction of pedestrians**

##### **(1) No person shall trade at place where such trading-**

- (a) obstruct access to or use of street facilities such as bus passenger bench or shelter or queuing line, refuse disposal bin or other facility intended for the use of the general public;
- (b) obstruct the visibility of the display window, signboard or premises, if the person carrying on business in the premises concerned object thereto;
- (c) obstruct access to a building in width, automatic bank teller machine, pedestrian crossing or motor vehicle; or
- (d) leaves less than 1,5m in width of a sidewalk clear for the pedestrian use or in any manner substantially obstruct pedestrians in their use of a sidewalk.

#### **7. Obstruction of vehicle traffic**

##### **(1) No person shall trade at a place where such trading-**

- (a) causes 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 or any display made in terms of this or any other by-law;



- (d) interferes in any way with any vehicle that may be parked alongside such place;  
or
- (e) obstruct or impedes the view of any user of the road, any traffic sign or any other road user.

## 8. Prohibitions

- (1) No person shall trade in any area, prohibited by council being-
  - (a) at a place or an area declared as a place or area in which the carrying on of street trading is prohibited;
  - (b) on a verge, contiguous to-
    - (i) a building belonging to or occupied solely by the State or the Council;
    - (ii) a church or other place of worship; or
    - (iii) a building declared to be a monument;
  - (c) 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;
  - (d) 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;
  - (e) at a place where it substantially obstructs pedestrians in the use of a sidewalk or take up a position or deposit the property on a sidewalk so as to do so;
  - (f) at a place where it causes an obstruction to vehicular traffic;
  - (g) at a place where it causes an obstruction in front of-
    - (i) an entrance to or exit from a building; and
    - (ii) a fire hydrant;
  - (h) on a stand or in any area if is not in possession of proof that he or she has hired such stand or area from the Council or that it has otherwise been allocated to him or her; or
  - (i) in contravention of the terms and conditions of the lease or allocation of a stand or area.

## 9. Restrictions

- (1) No person carrying on the business as 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, 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 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 this by-law;
- (h) carry on such business in a place or area in contravention of any restriction imposed by Council resolution;
- (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 National Road Traffic Act, 1996 (Act 93 of 1996), and regulations made thereunder or any marking, notice or sign displayed or made in terms of these by-law.

(2) The council shall reserve the right to restrict the number of street traders and street trader associations.

#### **10. Application to lease a kiosk**

- (1) Any person who intends to carry on business in a municipal kiosk shall apply to the municipality for the lease of a kiosk at the prescribed tariff.
- (2) If such application is successful –
  - (a) the municipality and the applicant shall enter into a lease agreement;
  - (b) the lessee must at all times comply with the terms and conditions determined by Council as indicated in the lease agreement;
  - (c) a certificate will be issued to the lessee as proof of the person's right to occupy such kiosk or designated area for the purpose of carrying on business; and
  - (d) the lessee must while carrying on business at the kiosk, at all times retain such certificate ready to produce same to any authorized officer on request.
- (3) A lessee may use the services of an employee subject thereto that the employee must at all times be in possession of the issued certificate and the provisions of this by-law shall be applicable to such an employee.
- (4) Should a person enter into a lease agreement for the lease of a kiosk and fail to pay the prescribed rental in part or at all on the due date, the Council shall have the right to cancel such agreement after having given such person 14 days written notice to make payment and the person persist in such non-payment and such person shall thereupon immediately return the certificate to the Council.

#### **11. Signs indicating restrictions**

- (1) The Council may pass a resolution after consultation with all interested parties, prescribing signs, markings or other devices to indicate-
  - (a) specified hours, places, goods or services in respect of which street trading is restricted;
  - (b) the location or boundaries of a restricted area;



- (c) the boundaries of a stand or area set apart for the purpose of the carrying on of a business of street trading;
  - (d) the fact that any such stand or an area has been let or otherwise allocated; and
  - (e) any restriction or prohibition against trading in terms of this by-law and the location of boundaries of a prohibited area.
- (2) The municipality may display any such sign, marking or device in such a position and manner that indicate the restrictions or other location or boundaries of the area or stand concerned.

## 12. Removal and impoundment

- (1) Any authorized officer may remove and impound any goods, articles, receptacle, vehicle or structure which the authorized officer-
- (a) reasonably suspect is being used or has been used in or in connection with street trading; and
  - (b) find at a place where street trading is restricted or prohibited and it constitutes an infringement.
- (2) An official may remove and impound such property or goods of the street trader concerned, or arrange for the removal and impoundment of such goods -
- (a) after the content of the instruction for the moving or removing of property or goods, have been explained to the street trader;
  - (b) after the official concerned ensured that the property or goods to be removed and impounded have been reasonably suspected to be used or were intended to be used for the trading which is in contravention of this by-law; and
  - (c) found by the official concerned at the place where such trading was restricted or prohibited.
- (3) An official who acts in terms of subsections (1) and (2) of this by-law, shall –
- (a) be properly authorized in writing;
  - (b) except where property or goods which have been abandoned are removed and impounded, immediately provide the transgressor concerned with a detailed and itemised receipt of the goods removed and impounded, which receipt shall contain—
    - (i) comprehensive information where the impounded goods shall be stored,
    - (ii) the procedure for the reclaiming of such goods, and
    - (iii) the procedure to make representation and show cause to the municipality why the removal and impoundment was not reasonable; and
  - (c) immediately hand over the goods impounded to the municipality for safekeeping.
- (4) Any goods impounded in terms of this by-law shall—
- (a) be kept by the municipality at a place of safekeeping and in the case of perishable products be stored in cold storage and a proper register shall be kept of all goods which are stored as such;
  - (b) in case of perishable goods impounded by the municipality, be destroyed after 7 days, after written notice to make representation why the goods should not be destroyed has been given to the owner of the products concerned, where the

contact particulars of such owner are known, and subject to the provision of subsection (3), the products may be reclaimed by the owner of such products before the disposal thereof –

- (i) when requested by such owner;
  - (ii) on submission of proof of ownership; and
  - (iii) on payment of the penalties and costs incurred by the municipality for the removal, impounding, storage and safekeeping of such perishable products, and such products shall then be handed over to the owner thereof; and
- (c) in case of any property other than perishable products impounded by the municipality, after written notice has been given to the owner of the products concerned, where the contact particulars of such owner are known, the property shall be returned to the owner within a period of 30 days, subject to subsection (3) and on condition that the property shall only be returned to the owner, on submission of proof of ownership, payment of the penalties and the costs incurred by the municipality for the removal, impounding, storage and safekeeping of such property or goods.
- (5) The municipality shall be entitled to retain the property or goods impounded in terms of subsection (2) of this by-law until all the penalties involved and the reasonable costs incurred by the municipality have been paid and by failure thereof the municipality may sell the involved property or goods on public auction or in the case of perishable products destroy it.
- (6) The municipality shall when non-perishable products and other property or goods, have not been claimed by the owner thereof within 30 days after written notices thereof to such owner or by failure of the owner of such property or goods to pay the required penalties and the costs owed to the municipality for the impoundment of such property or goods, or when the owner cannot be traced, sell the property or goods concerned by means of public auction and recover costs and penalties.
- (7) The municipality shall pay the remainder of the proceeds of an auction to the owner of the impounded property or goods after all penalties and costs of the municipality have been subtracted and if such owner cannot be traced the proceeds shall be forfeited to the municipality.
- (8) When the costs of the municipality cannot be recovered from the proceeds of an auction, the owner of such property or goods shall remain liable for the payment thereof.

### 13. Appeals

Any person whose rights are affected by a decision taken by the municipality in terms of this by-law under a duty or power which has been delegated or sub-delegated, may appeal against that decision in terms of section 62 of the Systems Act.

### 14. Offences and penalties

- (1) Any person who contravenes or fails to comply with any provision of this by-law shall upon conviction if found guilty, be liable to a fine not exceeding R500-00 or to imprisonment.



**15. Repeal of by-laws**

This by-law repeals the Musina Local Municipality Street Trading By-Law published in the Limpopo Provincial Gazette No. 2475 dated 20 February 2015 and Mutale Local Municipality Street Trading By-Law published in the Limpopo Provincial Gazette No. 1070 dated 14 January 2005, to an extent that it is applicable to the wards which are now in the Musina Municipality.

**16. Short title and commencement**

This by-law is called Musina Local Municipality Street Trading By-Law and shall come into effect on the date of publication in the *Provincial Gazette*.