

EMAKHAZENI LOCAL MUNICIPALITY



DRAFT BY-LAWS ON STREET TRADING

TABLE OF CONTENTS

1. Title.....	.....
2. Definitions.....	.....
3. Objects.....	.....
4. Freedom to Trade.....	.....
5. Non-Discrimination.....	.....
6. Applications of the By-Law.....	.....
7. Street Trading Areas.....	.....
8. Permission for Street Trading.....	.....
9. Cleanliness of Place of Business.....	.....
10. Removal and Impoundments.....	.....
11. Vicarious liability.....	.....
12. Appeals Procedure.....	.....
13. Offences and Penalties.....	.....
14. Repeal of the By-Law.....	.....

a) Title

This by-law is entitled the Street Trading By-Law.

b) Definitions

2.1 Unless it is clear that the context shows otherwise, in these by-law-

"authorized " Is an employee of the Municipality authorized to implements these by-law;

"council" is the Council of the Emakhazeni Local Municipality established in terms of Local Government: Municipal Structures Act (name, numbers and date of the legislation in terms of which the Municipality was established);

"litter" is anything that has been discarded or abandoned by a street trader or her/his customers;

"municipality service" is any system conducted by or on behalf of the Municipality and that is related to refuse, sewerage, storm-water, electricity or water;

"municipality" is either the body referred to in Section 2 of the Local Government: Municipal Systems Act 32 of 2000, or the area determined in terms of local Governments: Municipal Demarcation Act 27 of 1998;

"property" in relation to a street trader, is anything used in the connection with the carrying on of her/his business;

"Public place" has the meaning given to it in the local Government Ordinance, 1939;

"public roads" has the meaning given to it in the National Roads Traffic Act 93 of 1996;

"roadway" has the meaning given to it in the National Road Traffic Act 93 of 1996;

"sell" includes –

- a) offer to sell;
- b) exchange or hire out;
- c) display for sale;
- d) prepare for sale; and
- e) provide a service for reward;

"sidewalk" has the meaning given to it in the National Road Traffic Act 93 of 1996;

"street trader" is a person selling goods or offering a service for reward in a public place or public road;

“street trading” is the selling of goods or offering a service for reward in a public place or a public road;

“Town” is the Municipality of Emakhazeni, comprising of Emakhazeni, Dullstroom, Entokozweni and Emgwenya;

“vehicle” includes, but is not limited to –

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

2.2 a reference to a street trader also includes an employee of such a trader;

the selling of newspapers or any other item authorized by the Municipality, on the street, does not constitute street trading;

c) Objects

The objects of this by-law are to –

- a) Support and encourage street trading as a way of enhancing the Municipality’s existing formal economic activities; and
- b) Manage street trading in such a way that acceptable standards of public health, pedestrian safety and a free flow of traffic are maintained.

d) Freedom to Trade

Every person who complies with the criteria as set out in the section 8 has the right to engage in the street trading in the built environment of the Town, subject to the provisions of these by-laws

e) Non-discrimination

5.1 This by-law is applied in such a way as not to discriminate between persons on the grounds of race, religion, age, sex and culture.

5.2 These by-laws are applied in such a way as to respect and protect all people’s rights to dignity and freedom of trade, occupation and profession.

6. Application of By-Laws

These by-laws apply to all persons engaging in street trading or applying to engage in the street trading in the jurisdiction of Emakhazeni, regardless of whether they live within the Municipality's jurisdiction or not.

7. Street Trading Areas

7.1 For the purposes of street trading, the municipality has –

- a) Prohibited areas; and
- b) Restricted Areas;

7.2 Prohibited areas are those places in which street trading is prohibited and that is declared as such by the Council; or

7.3 Restricted areas are those places in which street trading is restricted and that is declared as such by the Council;

7.4 The Municipality may display signs or markings to indicate-

- a) the hours during which street trading may take place ;
- b) the boundaries of the areas where street trading may take place or where it is prohibited;
- c) the boundaries of individual stands;
- d) the fact that a stand has been let; and
- e) the goods and services which may be traded in;

7.5 In addition to the areas declared as prohibited by the Council in terms of Section 7.2 of these by-laws, street trading is also prohibited in the following place-

- a) on a stand, if she/he is not in possession of proof of her/his permission from the Municipality to trade there;
- b) adjacent to –
 - i. a building belonging to or solely occupied by the State or the Municipality;
 - ii. a place of worship;
 - iii. a building declared a national monument in terms of the National Monuments Act 28 of 1969
- c) in a garden or park, except with the written approval of the Municipality;
- d) adjacent to a building where business of the same nature is being carried on, unless the person carrying on the business consent to the street trading;
- e) adjacent to a building used for residential purpose, unless the owner or person in control or the occupants consent to the street trading ;

f) at place where –

- i. it obstructs a road traffic sign, road marking, a notice or demarcated parking areas;
- ii. it obstructs vehicular traffic or access to motor vehicles;
- iii. it obstructs the view of a road or any traffic on such a road;
- iv. it obstructs pedestrian traffic in the use of a sidewalk;
- v. it obstructs the entrance to or exit from a building, arcade or mall
- vi. it obstructs facilities for pedestrian or vehicular traffic, including, but not limited to pedestrian crossings, parking bays and loading bays and loading bays;
- vii. it obstructs facilities for the use of the general public, including, but not limited to bus shelters; benches and refuse bins;
- viii. it obstructs access to an automatic teller machine (ATM);and
- ix. it obstructs a fire hydrant.

8. Permission for Street Trading

8.1 if a person carries on street trading without permission from the Municipality, it is an offence in terms of these by-laws and his/her goods may removed and impounded by the Municipality in terms of section 11;

8.2 A person, who intends to carry on street trading, applies to the Municipality, on the prescribed application form attached as *Annexure A* for the lease of a stands.

8.3 For permission to engage in street trading, the applicant must either be South African citizen or have a valid work permit;

8.4 The Municipality determines the size and location of the stands set aside for allocation to street traders and the type of goods which may sold;

8.5 If the application is successful –

- a) She/he is allocated a stand

- b) She /he concludes a lease agreement with the Municipality at the rental as determined by the Municipality, taking into account the size of the stand, the desirability of the location, and the level of services provided; and
- c) Proof of the permission to carry on street trading on a particular stand is issued to the applicant and her/his employees;

9. Conduct of Street Traders

Street traders must, in the carrying on of their trade, adhere to the following requirements with regard to their conducts.

- a) The street traders must at all times while carrying on her/his trading, be able to produce proof of the permission to carry on street trading as issued by the Municipality;
- b) If the street trading business is carried on in a public place or public road, a street trader may only sleep overnight at the place of business with a written approval of the Municipality;
- c) If a street trader make a fire it must be done in a container that is at least half a meter above the ground;
- d) The street trader must ensure that the fire referred to in subsection 9.1(c) does not harm any person or property;
- e) A street trader may not create a nuisance or cause pollution of any kind;
- f) A street trader may not damage the surface of a public road or place or any property, whether public or private;
- g) A street trader may not create a danger to traffic;
- h) A street trader may not obstruct access to a municipal or any other statutory body;
- i) A street trader must, by request of an authorized employee or a supplier of other service, move her/his property to permit the carrying out of work related to that service; and
- j) A street trader may not display her/his goods in such a way as to obstruct the visibility of a display window.

10 Cleanliness of Place of Business

10.1. A street trader must, at the end of each trading day, remove everything that she/he utilized in connection with trading;

10.2. A street trader may not carry on her/his trade in such a way that it is a danger to safety or the environment;

10.3. A street trader must keep the area he/she occupies for the purpose of trading as well as everything used in connection with trading, in a good state of repair, clean and free of litter;

10.4. A street trader must store or dispose of litter in a refuse receptacle approved or provided by the Municipality;

10.5. A street trader must, at the request of an employee of the Municipality, move or remove anything utilize in connection with her/his trading, so that the place of business may be cleaned; and

10.6. If a street trader prepares and/or sells food, in the requirements in subsections 10.1 to 10.5, she/he-

- a) must apply for a certificate of acceptability from the Municipality;
- b) must have the certificate mentioned in subsection 10.6(a) available while trading;
- c) must ensure that the food is prepared in a safe and hygienic way; and
- d) must prevent spilling of fat, grease or oil onto a public road or public place;

11.1. An authorized employee of the Municipality may remove and impound anything-

- a) which she/ he reasonably suspects is or was used in connection with a street trader's business, and
- b) which is found at a place where the carrying on-of a street trader's business is restricted or prohibited in terms of these by-laws and which, in her/his option, infringes the prohibition or restriction or restriction, whether or not the goods are in the possession or under the control of anyone at the time of impoundment or removal;

11.2. Before removing and impounding anything in terms of sub-section 11.1, the Municipality must give the street trader or the person under whose control the goods are, written details of the alleged infringements and reasonable notice to remove the goods;

11.3. If the goods are removed and impounded, the authorized employee must, except where goods have been left or abandoned, issued a receipt for the goods impounded and removed to the person who appears to be in control of the goods, which receipt must-

- a) itemized the property to be removed and impounded;
- b) provide the address where the impounded property will be kept, and the period thereof;
- c) state the conditions for the release of the impounded property;
- d) state the terms and conditions relating to the sales of unclaimed property by the public auction ; and
- e) provide the name and address of the council official to whom any representations regarding the impoundment may be made, and the date and the time by which this must be marked and kept safe;

11.3 After criminal proceedings are finalized, the owner may claim her/his goods by submitting proof of ownership to the satisfaction of the Municipality;

11.4 At least twice a year, the Municipality shall publish a notice in two languages in a newspaper circulating in the Municipality, containing –

- a) a description of the goods removed in terms of subsection 11.1;
- b) the address where the goods were found;
- c) if known, the owner's names;
- d) an indication that the owners may claim their goods by proof of ownership of the satisfaction of the Municipality; and
- e) an indication that if the goods are not claimed within three months from the date of publication of the notice, it will be destroyed if it is of no commercial value and if it has value, it will be sold by public auction and the proceeds retained by the Municipality to cover its costs;

11.5. If the goods are not claimed within three months from the date of publication of the notice, it will be sold by the public auction and the proceeds retained by the Municipality to cover its costs;

11.6. If the goods are perishable, it will only be kept for 24 hours from removal and impoundment and then destroyed;

11.7. The Municipality is not liable for any loss of or damage to goods arising out of its removal and impoundment or as a result of the goods being sold by public auction, subject to fair administration procedures;

11.8. The owner of the goods does not have any claim or redress against the Municipality if the goods fall to a person other than the owner.

12. Vicarious Liability

12.1 If an employee of a street trader commits an offence in terms of these by-laws, the street trader is deemed to have committed the offence herself/himself and shall be liable unless she/he proves that –

(a) in committing the offence , the employee was acting without her/his permission or knowledge

(b) he/she took all reasonable steps to prevent the employee from committing the offence; and

(c) the offence was not committed within the scope of the employee's authority or the course of the employee's employment;

12.2. If a street trader is liable in terms of subsection 12.1 for an offence committed by her/his employee is also liable for that offence.

13. Appeals Procedure

13.1. A person whose rights are affected by a decision taken by –

a) The Council; or

b) An employee

Of a Municipality in terms of a power or duty delegates to it/them, may appeal against the decision;

13.2. The appeal is lodged by giving written notice of the appeal and the reasons to the Municipal Manager within 21 days after the date of notification of the decision;

13.3. If the decision against which the appeal is lodged, was taken by –

- a) A staff member other than the Municipal Manager, then the Municipal Manager is the appeal authority;
- b) The Municipal Manager, then the Executive Committee or Executive Mayor is the appeal authority.

13.4. The Municipal Manager must promptly submit the appeal to the appropriate appeal authority as set out in subsection 13.3;

13.5. The appeal authority shall consider the appeal and shall confirm or revoke the decision that was taken, it may not detract from any rights that accrued as a result of the decision; and

13.6. An appeal authority shall start with an appeal within six week and take a decision within a reasonable period.

14. Offences and Penalties

14.1. A person commits an offence in the terms of these by-laws if she/he –

(a) Contravenes or fail to comply with a provision of these by-laws or an approval or condition granted or imposed in terms of these by-laws;

(b) Disregards any notice, sign or marking displayed for the purpose of these by-laws;

(b) Makes a false statement or furnishes false or misleading information to an authorized employee; or

(c) Threatens or prevents an authorized employee to exercise his powers or duties in terms of these by-laws.

14.2. The Municipality must give written details of the alleged offence as the provide reasonable notice to the person who allegedly committed this offence to remedy the behavior, alternatively where circumstances dictate a fine may be issued, and if the fine is not paid then summons must be issued to appear in court.

14.3. a person who commits an offence in terms of these by-laws and is convicted, is liable to an appropriate fine or to such community service as imposed by the presiding officer.

15. Repeal of By-laws

.....(title
of current by-laws) published in terms of
.....(number and date of Provincial Gazette)is
hereby repealed with effect from the date of promulgation of these by-laws.

DRAFT

ANNEXURE A

**APPLICATION FORM FOR PERMISSION TO ENGAGE IN THE STREET TRADING
IN EMAKHAZENI LOCAL MUNICIPALITY**

1. Full names and surname _____
2. Identification number or
Work permit number _____
3. Residential Address

4. Type of Business _____
5. Required Trading area

6. Date of application _____

FOR OFFICE USE

1. Trader's name

.....

2. Trading area

.....

3. Trader's number

.....

4. Is registration fee paid?

.....

5. Date of Registration

.....

Signature

DRAFT

DRAFT