

MBHASHE LOCAL MUNICIPALITY
THESE BY-LAWS ARE GAZETTED

**BY-LAW RELATING TO STREET TRADING,
2016**

NB: The sections or wording in black are the sections in the current gazetted by-laws.
The sections in dark red/maroon are proposed additional sections to the by-law.
The wording in purple and *italics* are sections to be removed entirely.
The wording in green is commentary for understanding.

BY-LAWS

To provide for the regulation of street trading within the municipal area of the Municipality and to provide for matters incidental thereto.

BE IT ENACTED by the Council of the Mbhashe Local Municipality, as follows:

TABLE OF CONTENTS

CHAPTER 1

INTERPRETATION

1. Definitions

CHAPTER 2

STREET TRADING IN THE BUSINESS AREA

2. Street Trading
3. Street Trading Site and Identity Card
4. Cancellation of Street Trading Identity Card
5. Street Trading Structures
6. Exemption
7. Prohibited Goods
8. Prohibited Areas

CHAPTER 3

STREET TRADING IN THE RESIDENTIAL AREA

9. Street Trading
10. Prohibited Goods
11. Prohibited Areas

CHAPTER 4

STREET TRADING IN THE RURAL AREA

12. Street Trading
13. Prohibited Goods

14. Prohibited Areas

CHAPTER 5

MISCELLANEOUS

- 15. Control measures
- 16. Removal and impoundment
- 17. Display of approval
- 18. Delegation
- 19. Offences and penalties
- 20. Repeal of By-Laws
- 21. Short title and commencement

CHAPTER 1

INTERPRETATION

1. Definitions

(1) In these By-Laws, unless the context indicates otherwise –

“Act” means the Businesses Act, 1991 (Act 71 of 1991), and includes the regulations promulgated under the Act;

“approval” means approval by the municipality and “approve” has a corresponding meaning;

“business area” means those areas at Elliotdale, willowvale and Dutywa where most of the businesses are situated, including those areas where businesses are situated in residential areas as indicated by the Municipality;

“Council” means —

- (a) Municipal Council of Mphashe Local Municipality exercising its legislative and executive authority through the Municipality;
- (b) its successor in title;

- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-Laws has been delegated or sub delegated or an instruction given, as referred to in section 59 of the Act; or
- (d) a service provider fulfilling a responsibility under these By-Laws;

“foodstuffs” means any foodstuffs which are prepared elsewhere or at the street trading site and which are sold as meals or snacks and excludes all fresh fruits and vegetables;

“garden” means a garden to which the public has a right to 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 (Act93 of 1996);

“litter” means any object or matter which is discarded by a person in any place except in an approved receptacle provided for that purpose or at a waste disposal or processing facility;

“motor vehicle” means a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

“Municipality” means Mbhashe Local Municipality and its legal successors, and when referred to as-

- (a) a legal entity, means Mbhashe Local Municipality as described in section 2 of the Local Government: Municipal Systems Act, (Act No. 32 of 2000); and
- (b) a geographic area, means the municipal area of the Mbhashe Local Municipality as determined from time to time in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);

“municipal manager” is the person appointed by the municipality in terms of Section 82 of the Municipal Structures Act, 1998 and includes any person:

- (a) acting in such position; and

- (b) to whom the municipal manager has delegated any power, function or responsibility in as far as it concerns the execution of those powers, functions or duties.

"nuisance" means any conduct or condition which brings about or may bring about a state of affairs or condition which is obnoxious and, or constitutes a health risk or a source of danger to human lives or property or which interferes or may interfere with the ordinary comfort, convenience, peace or quiet of persons;

"officer" means -

- (a) a traffic officer appointed under section 3 of the National Road Traffic Act, 1996 (Act No.93 of 1996);
- (b) a member of the South-African Police Services as defined in the South African Police Service Act (Act No. 68 of 1995);
- (c) a peace officer contemplated by section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or
- (d) a security officer employed by the Municipality;

"park" means a park to which the public has a right to access;

"perishable foodstuffs" mean perishable foodstuffs declared as such in the Perishable Foodstuffs Regulations published under Government Notice R1183 in Government Gazette 12497 of 1 June 1990 (as amended) in terms of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972 and which includes meat, milk, fish, fish spawn, molluscs, crustaceans, fruit, vegetables and bread;

"premises" includes any land, building, structure, part of a building or of a structure, or any vehicle, conveyance, vessel or aircraft;

"prescribed fees" means the fees as determined from time to time by the Municipality by means of resolution;

"property", in relation to a street trader, means goods in which a street trader trades, and includes any article, container, vehicle or structure used or intended to be used in connection with street trading by the street trader;

"public place" includes any public road, sanitary passage, square or open space shown on a general plan of a township or settlement, filed in any deeds' registry or surveyor-general's office, and all land (other than erven shown on the general plan) the control whereof is vested, to the entire exclusion of the owner, in the Municipality or to which the owners of erven in the township have a common right, and all property belonging to an organ of state;

“public amenity” means –

- (a) any land, square, camping site, caravan park, beach, swimming pool, public open space, public resort, recreation site, river, dam, nature reserve, zoo-logical, botanical or other garden, or hiking trail, including any portion thereof and any facility or apparatus therein or thereon, which is the property of, or is possessed, controlled or leased by the municipality and to which the general public has access, whether on payment of admission of fees or not, but excluding a public road or street;
- (b) a building, structure, hall room or office, including any part thereof or any facility or apparatus therein, which is the property of, or is possessed, controlled or leased by the municipality and to which the general public has access, whether on payment of admission of fees or not; and
- (c) a public amenity contemplated in paragraphs (a) and (b) if it is lawfully controlled or managed in terms of an agreement between a person and the municipality;

"public road" means any road, street, sidewalk, thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or a section thereof or to which the public or any section thereof has a right of access and includes -

- (a) the sidewalk of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare, and
- (c) any other work or object forming part of or connected with or belong to such road, street or thoroughfare;

“residential area” means those areas at Dutywa, Willowvale and Elliotdale used mainly for residential purposes;

“rural area” means all areas in the Municipality excluding the business and residential areas;

"sell" includes to exchange, barter or hire out by a street trader and includes the preparing, processing, storing, offering and, or displaying for sale any goods or services by a street trader and **“selling”** has a corresponding meaning;

"sidewalk" means that portion of a public road intended for the use of pedestrians;

"street trader” means any person carrying on business, whether as principal, employee or agent, by selling, supplying or offering any goods or the supplying or offering to supply any service for reward, in or from a public road or public place in the Municipality;

“street trading” means conducting of the business of a street trader;

“street trading identity card” means a card issued by the Municipality to a street trader selling in the business area, identifying him or her and the street trading site from where he may conduct street trading;

“street trading site” means a site in a public place, determined and approved by the Municipality, from where street trading may be conducted;

2 Principles and objectives

- (1) The Municipality, acting in terms of section 6A (1) (a)(i) of the Businesses Act, 1991 (Act 71 of 1991), and –
 - (a) having regard to the principles set out in the Act and in the Constitution;
 - (b) taking into consideration the need of the residents to actively participate in economic activities; and
 - (c) taking into consideration the need to maintain a clean, healthy and safe environment, in this by-law provides mechanisms, procedures and rules to manage street trading.
- (2) In the development and management of its obligations and the implementation of this by-law, the municipality also recognises the infrastructural, social and economical disparities and inequalities resulting from previous local government dispensations and shall strive to overcome such disparities and inequalities by supporting the new goals for local government as determined in section 152 of the Constitution.
- (3) In the implementation and enforcement of this by-law, the municipality may take into consideration the realities of the Mbashe Local

Municipality area, the different customs, cultures, circumstances, geographical areas, kinds of premises levels of development and conventions and the municipality may use the devices provided for in this by-law, including the application of different norms, standards and guidelines, the granting of exemptions and the utilisation of liaison forums.

3 Application

This by-law applies to all persons who carry on the business of street trading within the area of jurisdiction of the Mbhashe Local Municipality.

CHAPTER 2

STREET TRADING IN THE BUSINESS AREA

Street Trading

2. Street trading is allowed within the business area, subject to the provisions of these By-Laws and other applicable legislation.

Street Trading Site and Identity Card

3. (1) No person may conduct the business of a street trader in the business area without being in possession of a valid street trading identity card/licence issued by the Municipality.

(2) A person who wants to do street trading in the business area must apply to the Municipality on a prescribed form for the allocation of a street trading site to him or her.

(3) On allocation of such a site to the applicant, a street trading identity card/licence will be issued to him or her after payments of the prescribed fees, if any.

(4) All street trading sites will be leased to the street traders at a fee as determined by the Municipality from time to time;

(5) No street trading identity card/licence will be issued to a street trader selling foodstuffs before he or she obtained a license from the Environmental Health-sub-directorate of the Municipality.

(6) Such street trading identity card/licence issued by the Municipality must, on demand, be provided to an officer or an employee of the Municipality.

(7) The Municipality may reduce, extend and or disestablish any street trading site. At least 30 days written notice will be given to a street trader to vacate a site that will be disestablished.

(8) Street traders that trade from their motor vehicles, trailers or caravans must also apply for the licence irrespective of the duration of such trade. Also bearing observing the laws related to parking.

Cancellation of Street Trading Identity Card

4. (1) The Municipality may withdraw and cancel a street trading identity card/licence if:

- (a) a street trader fails to pay any prescribed fees as determined in these By-Laws to the Municipality within a period of 60 days, and
- (b) a street trader is found guilty of a contravention of any of these By-Laws.

Street Trading Structures

5. (1) The Municipality may erect structures on street trading sites in the business area, which structures must be leased on a monthly basis to the street trader to whom the site has been allocated in terms of section 3.

(2) A street trader must on demand, produce a proof of payment of the lease for the structure to an officer or an employee of the Municipality.

Exemption

6. The Municipality may exempt any person, organisation, group or committee from obtaining a street trading identity card for a specific event or function and for a specific period. Such exemption must be in writing, and must on demand be provided to an officer or employee of the Municipality.

Prohibited Goods

7. (1) The following goods may not be sold by street traders in the business area:

- (a) live-stock, pets, reptiles, birds, rabbits, wild animals and, or poultry except with the prior written approval of the Municipality;
- (b) raw meat or raw fish;
- (c) milk;
- (d) any form of alcohol or alcoholic drinks;
- (e) vehicles, trailers or caravans;
- (f) any noxious or smelly substance or article that may cause a nuisance;
- (g) pesticides, insecticides, poisonous and, or hazardous substances;
- (h) any counterfeit goods or articles and any goods prohibited by legislation;

Restricted and prohibited areas

- (1) The municipality may, in terms of section 6A(2)(a) of the Act and subject to the provisions of paragraphs (b) up to and including (j), declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited.
- (2) The municipality may by public notice and by erected sign indicate such areas, and the notice and sign must indicate –
 - (a) the restriction or prohibition against street trading;
 - (b) if street trading is restricted –
 - (i) the boundaries of the area or stand set aside for restricted street trading;
 - (ii) the hours when street trading is restricted or prohibited; and
 - (iii) the goods or services in respect of which street trading is restricted or prohibited; and
 - (c) that the area has been let or otherwise allocated.
- (3) The municipality may change the areas contemplated in subsection (1) if the needs and circumstances of residents and street traders demand such reconsideration.

- (4) A person who carries on the business of a street trader in contravention of a notice contemplated in subsection (2) commits an offence.

Prohibited Areas

8. (1) Street trading in the business area may only be conducted from a street trading site allocated by the Municipality in terms of section 3, and it is prohibited to sell from any site :

- (a) in any garden or park which is zoned as a public or private open space and to which the public has a right of access;
- (b) on a sidewalk adjacent to :
 - (i) a building belonging to or occupied solely by the Municipality or an organ of state;
 - (ii) a church or other place of worship;
 - (iii) a building declared to be a national heritage resource in terms of the National Heritage Resources Act, 1999 (Act No 25 of 1999);
 - (iv) an automated teller machine or at any entrance to any bank or other financial institutions;
- (c) at a place where:
 - (i) it causes or may cause an obstruction in front of a fire hydrant or an entrance to or exit from a building;
 - (ii) it causes an obstruction to vehicle traffic;
 - (iii) it substantially obstructs or may obstruct pedestrians or persons in wheelchairs or other disabled persons in their use of and access to a sidewalk;
- (d) on a sidewalk adjacent to a building in which business is being carried on by any person who sells goods of the same nature as or

of a similar nature to goods being sold by the street trader concerned, without the consent of that person;

- (e) on that half of a public road adjacent to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto;
- (f) within 5 metres of any signalised intersection of two or more streets, measured from the nearest end of the curve in the kerb line, with no part of any structure nearer than two metres from the edge of the road and not within 20 metres from any priority controlled (unsignalised) intersection of two or more streets, measured from the nearest end of the curve in the kerb line and with no part of any structure nearer than two metres from the edge of the road;
- (g) at any place where the selling of goods limits or may limit access to parking- or loading-bays or any other facilities for vehicular traffic;
- (h) within the reserve of any road;

CHAPTER 3

STREET TRADING IN THE RESIDENTIAL AREA

Street Trading

9. Street trading is allowed within the residential area, subject to the provisions of these By-Laws and other applicable legislation.

Prohibited Goods

10 (1) The following goods may not be sold by street traders in the residential area:

- (a) live-stock, pets, reptiles, birds, rabbits, wild animals and, or poultry, except with the prior written approval of the Municipality;

- (b) raw meat or raw fish;
- (c) milk;
- (d) any form of alcohol or alcoholic drinks;
- (e) vehicles, trailers or caravans;
- (f) any noxious or smelly substance or article that may cause a nuisance;
- (g) pesticides, insecticides, poisonous and, or hazardous substances;
- (h) any counterfeit goods or articles and any goods prohibited by legislation;

Prohibited Areas

11. (1) Street trading in the residential area may not be conducted:

- (a) in any garden or park which is zoned as a public or private open space and to which the public has a right of access;
- (b) on a sidewalk adjacent to :
 - (i) a building belonging to or occupied solely by the Municipality or an organ of state;
 - (ii) a church or other place of worship;
 - (iii) a building declared to be a national heritage resource in terms of the National Heritage Resources Act, 1999 (Act No 25 of 1999);
- (c) at a place where :
 - (i) it causes or may cause an obstruction in front of a fire hydrant or an entrance to or exit from a building;
 - (ii) it causes an obstruction to vehicle traffic;

- (iii) it substantially obstructs or may obstruct pedestrians or persons in wheelchairs or other disabled persons in their use of and access to a sidewalk;
- (d) on that half of a public road adjacent to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto;
- (e) within five metres of any signalised intersection of two or more streets, measured from the nearest end of the curve in the kerb line, with no part of any structure nearer than two metres from the edge of the road and not within 20 metres from any priority controlled intersection of two or more streets, measured from the nearest end of the curve in the kerb line and with no part of any structure nearer than two metres from the edge of the road;
- (f) at any place where the selling of goods limits or may limit access to parking- or loading-bays or any other facilities for vehicular traffic;
- (g) within the reserve of any road.

on a portion of a sidewalk or public amenity in contravention of a notice or sign erected or displayed by the municipality for the purposes of this by-law; or

within ten meters (10m) of the entrance to a financial institution or electronic banking facility

A person to whom an area or stand has been let or allocated under paragraph (c) of section 6A(3) of the Act –

- (a) must comply with the conditions of the lease of allocation;
 - (b) must be in possession of written proof that municipality has let or allocated the area or stand to him or her; and
 - (c) may not transfer any written proof that municipality has let or allocated the area or stand to him or her
- (4) No person may purchase or offer to purchase from a street trader any goods or service, including casual labour services, in or at a place where street trading is prohibited.
- (5) A person who contravenes a provision of this section commits an offence.

CHAPTER 4

STREET TRADING IN THE RURAL AREA

Street Trading

12. Street trading is allowed within the rural area, subject to the provisions of these By-Laws and other applicable legislation.

Prohibited Goods

13. (1) The following goods may not be sold by street traders in the rural area,

- (a) raw meat or raw fish;
- (b) milk;
- (c) any form of alcohol or alcoholic drinks;
- (d) vehicles, trailers or caravans;
- (e) any noxious or smelly substance or article that may cause a nuisance;
- (f) pesticides, insecticides, poisonous and, or hazardous substances;
- (g) any counterfeit goods or articles and any goods prohibited by legislation;

Prohibited Areas

14. Street trading in the rural area may not be conducted from any place where it causes any traffic hazard or an obstruction to a vehicular entrance.

CHAPTER 5

MISCELLANEOUS

Control Measures

15. (1) A street trader must not-

- (a) sleep overnight at his or her place of selling;
- (b) erect any structure at his or her place of selling, except a device or structure for which written approval has been obtained from the Municipality on the prescribed form;
- (c) carry on his or her 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 other property of the Municipality;
 - (iii) create a traffic hazard;
- (d) litter, accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any refuse, scrap or waste material on any land or premises or on any public road or public place or waterway, other than in a refuse receptacle approved by the Municipality.
- (e) burn any goods, materials or refuse or start a fire for any reason other than preparing foodstuffs for which the street trader has the necessary approval;
- (f) permit or cause any goods, receptacles or refuse to be placed outside the demarcated confines of the approved street trading-stand;
- (g) sell his or her goods or services in or at a building or property without the consent of the owner, lawful occupier or person in control of such building or property;

- (h) take up position or place his or her goods or property on a public place in contravention of a notice or sign erected or displayed by the Municipality for purposes of these By-Laws; or
- (i) commence selling before 07h00 or sell after 20h00.

(2) A street trader must -

- (a) remove every day from any public road or public place at the conclusion of selling, all waste, packaging material, stock and equipment of whatever nature which are utilised in connection with such business, unless prior written approval exempting him or her from this provision, has been given by the Municipality;
- (b) conduct street trading in such a manner as not to be a danger or threat to public health or public safety;
- (c) at the instruction of an officer or an employee of the Municipality, move or remove any goods, receptacle, vehicle or structure used for his or her business, or any litter and refuse on or adjacent to his or her stand .

Removal and impoundment

16. (1) An officer may remove and impound any goods, receptacle, vehicle or structure which he reasonably suspects are being used or are intended to be used or have been used in or in connection with street trading -

- (a) which are prohibited goods in terms of sections 6,9 or 12;
- (b) which he finds at a place where street trading is prohibited;
- (c) which a street trader has failed or refused to remove from the place after having been instructed to do so by an officer or an employee of the Municipality, or which have been left there or abandoned.

(2) An officer acting in terms of subsection (1)-

- (a) must issue to a street trader a written proof of impoundment for any goods, receptacle, vehicle or structure so removed and impounded, but the officer may attach the written proof to an approved structure if no person is available to receive the

written proof and where no structure is available the written proof of impoundment must be kept in the Municipality's records;

- (b) must forthwith deliver any such goods, receptacle, vehicle or structure to the Municipality;
- (c) may, and must on instruction of an Environmental Health Officer destroy all perishable and prohibited goods after 24 hours after impounding the said goods.

(3) Goods, excluding prohibited goods, receptacles, vehicles or structures can be returned to a street trader after payment of the determined fines and prescribed fees levied for impounding and storing, except if a magistrate makes another ruling.

(4) The Municipality may discard with, sell or give away any goods, receptacles, vehicles or structures that have not been collected from the Municipality in terms of subsection (3), within 14 days after the date of impoundment.

(5) An officer, the Municipality or an employee of the Municipality must not be liable for any loss or theft of or damage to any goods, receptacle, vehicle or structure removed and impounded and, or destroyed in terms of these By-Laws.

Display of approval

17. A street trader must carry on his or her person a valid street trading identity card or any other written approval issued to him or her by the Municipality in terms of these By-Laws and must on demand show such identity card or written approval to an officer or an employee of the Municipality.

Newspaper vendors

- (1) Any publisher of a newspaper that sells such newspaper by using vendors in or on a road must enter into an agreement with the municipality regarding the areas where and times during which such sales may be undertaken.
- (2) The municipality may determine the hours during which the sale of newspapers in terms of subsection (1) may be undertaken.
- (3) The municipality may levy a tariff for the sale of newspapers in or on any road within its area of jurisdiction.
- (4) Any publisher or vendor that contravenes the provisions of this section commits an offence.

Delegation

18. Subject to the provisions of any other legislation, the Municipality may delegate or assign in writing any power, duty or function imposed by or under these By-Laws, to any person in its employ subject further to such conditions as it may deem necessary.

Offences and penalties

19. (1) A person who -

- (a) contravenes any provision of these By-Laws or fails to comply therewith or with any condition imposed in terms thereof;
- (b) threatens, resists, interferes with or obstructs any officer or any employee of the Municipality in the performance of his or her duties or functions in terms of or under these By-Laws, or
- (c) deliberately furnishes false or misleading information to an officer or an employee of the Municipality;
- (d) fails to comply with an instruction from an officer to move or remove his or her goods, receptacles structures, litter or refuse;
- (e) fails to comply with any condition granted or imposed in terms of these By-Laws;
- (f) ignores, disregards or disobey any notice, sign or marking displayed or erected for purposes of these By-Laws, is guilty of an offence and must upon conviction by a court be liable to a fine not exceeding R 10 000-00, or imprisonment for a period not exceeding one year or both a fine as well as period of imprisonment, or such other fine or period of imprisonment which the Minister of Justice may from time to time determine in terms of the provisions of section 92 of the Magistrate's Courts Act, 1944 (Act No 32 of 1944)

(2) Any person who, after conviction in terms of these By-Laws, persists in the conduct or neglect which caused the offence, must be guilty of a continuing offence and liable to a fine of at least R100.00 per day for each ensuing day that the contravention persists.

(3) Any expense incurred by the Municipality as a result of a contravention of these By-Laws or in the doing of anything which a person was directed to do under these By-Laws and which he failed to do, may be recovered by the Municipality from the person who committed the contravention or who failed to do such thing.

Responsibility of persons employing street traders

When an employee of a person who performs an act which contravenes a provision of this by-law, the employer is deemed to have committed the contravention himself or herself, unless he or she proves that –

- (a) he or she did not permit such act;
- (b) he or she took all reasonable steps to prevent the performance of the act; and
- (c) it was not in the scope of the authority or the course of employment of the employee to perform an act which contravenes this by-law.

Appeal

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

Liaison forums in community

- (1) The municipality may establish one or more liaison forums in a community for the purposes of –
 - (a) creating conditions for a local community to participate in the affairs of the municipality; and
 - (b) promoting economic development.
- (2) A liaison forum may consist of –
 - (a) a member of members of an interest group, or an affected person;
 - (b) a member or members of a ward committee in whose immediate area street trading is conducted;
 - (c) a designated official or officials of the municipality; and
 - (d) a councillor.

- (3) (a) The municipality may, when considering an application for an approval; or exemption certificate in terms of this by-law, request the input of a liaison forum;
- (b) A liaison forum or any person or persons contemplated in subsection (2) may, on own initiative an input to the municipality for consideration.

Repeal of By-Laws

20. All previous Council regulations, policies and arrangements dealing with street trading are repealed.

Short title and commencement

21. These By-Laws are called Street Trading By-Laws, 2016 and will come into operation on the date of publication in the *Provincial Gazette*.