

PUBLISHED IN FREE STATE PROVINCIAL GAZETTE NO. 80 OF 9 DECEMBER 2011

PROVINCIAL NOTICE

[NO. 179 OF 2011]

**NOTICE IN TERMS OF SECTION 14(2)(a)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000:
PUBLICATION: STANDARD CONTROL OF STREET VENDORS, PEDDLERS OR HAWKERS BY-LAW**

I, M.G Qabathe, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State Province, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association: Free State, do hereby in terms of section 14(2)(a)(i) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), make standard by-laws as set out in the Schedule.

SCHEDULE

CONTROL OF STREET VENDORS, PEDDLERS OR HAWKERS BY-

CHAPTER 1 : INTERPRETATION

LAW Definitions

In this by-law, unless the context indicates otherwise, any expression to which a meaning has been assigned in the

Business Act, 1991 (Act No. 71 of 1991) and the Road Traffic Act, 1989 (Act No. 29 of 1989) is, when used in these

Bylaws, have the meaning thus assigned

and –

"council" means the municipal council of the Tswelopele Local Municipality in which the executive and legislative authority of the municipality is vested, and which is the decision making body of the municipality, and its delegates

"street vendor, peddler or hawker" means any person carrying on business, whether as principal, employee or agent, by selling any goods or services -

- (i) which is conveyed from place to place, whether by vehicle or otherwise;
- (ii) on a public road or at any other place accessible to the public;
- (iii) in, on or from a movable structure or stationary vehicle;

"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;

"residential area" means those areas in Bultfontein and Hoopstadl used mainly for residential purposes;

"rural area" means all areas in the municipality excluding the business and residential areas;

"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; but excludes business traders as defined in the Business Act

"street trading" means conducting of the business of a street trader;

"street trading identity card/permit" means a card issued by the Council to a street trader selling in the business area, identifying him 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 Council, from where street trading may be conducted

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

"officer"

means -

- (i) a traffic officer appointed under section 3 of the Road Traffic Act, 1989 (Act No. 29 of 1989);
- (ii) a member of the Force as defined in section 1(1) of the South African Police Services Act, 1995 (Act No. 68 of 1995).
- (iii) a peace officer contemplated by section 334 of the Criminal Procedure Act, 1977 (Act. No. 51 of 1977); "public place" includes any street, road, thoroughfare, 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 a local authority or to which the owners of erven in the township have a common right;

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

- (i) the verge of any such road, street or thoroughfare;
- (ii) any bridge, ferry or drift traversed by any such road, street or thoroughfare, and
- (iii) any other work or object forming part of or connected with or belong to such road, street or thoroughfare, "sell" includes to prepare, process, store, offer or display for sale; "sidewalk" means that portion of a verge intended for the exclusive use of pedestrians;

"the Act" means the Business Act, 1991 (Act No. 71 of 1991);

"verge" means that portion of the road, street or thoroughfare which is not the roadway.

- (2) In these by-laws, unless the context indicates otherwise, words and expressions denoting the singular shall include the plural and vice versa, words and expressions denoting the male sex shall include the female sex and vice versa and reference to a natural person shall include a legal person and vice versa

CHAPTER 2 : STREET TRADING IN THE BUSINESS AREA

2. Street Trading

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

3. Street Trading Site and Identity Card and Reflectors

(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 issued by the Council.

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

(3) On allocation of such a site to the applicant, a street trading identity card will be issued to him, after payments of the prescribed fees, if any, and can only trade from such a site.

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

(5) No street trading identity card will be issued to a street trader selling foodstuffs before he obtained a trading license and certificate of acceptability therefore from the Environmental Health-sub-directorate of the Municipality.

(6) Such street trading identity card issued by the Council must on demand be provided to an officer or an employee of the municipality.

(7) The Council 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.

4. Cancellation of Street Trading Identity Card

(1) The Council may withdraw and cancel a street trading identity card 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.

5. Street Trading Structures

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

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

6. Exemption and Closing of Street for Trading

(1) 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.

(2) The municipality may upon written application, authorize, in writing, the closure of any street for a specified period for the purposes of a specific event or function. Such authorization must on demand be provided to an officer or employee of the municipality.

7. Prohibited Goods

(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 Council;
- (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;

8. Prohibited Areas

(1) Street trading in the business area may only be conducted from a street trading site allocated by the Council 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 without prior approval from Council;

(b) on a sidewalk adjacent to :

- (i) a building belonging to or occupied solely by the Council 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 (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 2 (two) metres from the edge of the road and not within 20 (twenty) 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 2 (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

9. Street Trading

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

10. Prohibited Goods

(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 Council;

(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;

11. Prohibited Areas

(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 Council 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 5 (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 2(two) metres from the edge of the road and not within 20(twenty) 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 2(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.

CHAPTER 4 STREET TRADING IN THE RURAL AREA

12. Street Trading

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

13. Prohibited Good

(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;

14. Prohibited Areas

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.

15. Control measures

- (1) No street vendor, peddler or hawkker must -
 - (a) sleep overnight at his or her place of business or erect any structure for the purpose of providing shelter, without the prior written approval of the Council;
 - (b) 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 Council;
 - (iii) create a traffic hazard;
 - (c) 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 Council
 - (d) 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
 - (e) permit or cause any goods, receptacles or refuse to be placed outside the demarcated confines of the approved street trading-stand;
 - (g) sell his 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 goods or property on a public place in contravention of a notice or sign erected or displayed by the Council for purposes of these by-laws;
 - (i) commence selling before 07h00 or sell after 20h00.
- (2) A street trader shall:
 - (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 from this provision, has been given by the Council;
 - (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 Council, move or remove any goods, receptacle, vehicle or structure used for his business, or any litter and refuse on or adjacent to his stand

16. Removal and impoundment

(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 7,10 or 13;
- (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 Council, or which have been left there or abandoned.

(2) An officer acting in terms of sub section 1, must –

- (a) shall issue to a street trader a written proof of impoundment for any goods, receptacle, vehicle or structure so removed and impounded: Provided that 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 shall be kept in the Municipality's records;
- (b) shall forthwith deliver any such goods, receptacle, vehicle or structure to the Council;
- (c) may, and shall 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 in this regard.
- (4) The Council may discard with, sell or give away any goods, receptacles, vehicles or structures that have not been collected from the Council in terms of subsection (3), within 14 days after the date of impoundment.
- (5) An officer, the Council or an employee of the Council shall 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. An officer, the Council or an employee of the Council is not liable for any loss or theft of or damage to any goods, receptacle, vehicle or movable structure removed and impounded in terms of these bylaws.

17. Display of approval

A street vendor, peddler or hawker must carry on his or her person a valid trading card or written approval granted or issued to him or her by the Council in terms of these regulations and must on demand show such written approval to an officer or an employee of the Council.

18. Delegation

Subject to the provisions of any other legislation, the Council 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

19. Offences and penalties

- (1) A person who –
 - (a) contravenes any provision of these Bylaws 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 Council in the performance of his or her duties or functions in terms of or under these Bylaws, or
 - (c) deliberately furnishes false or misleading information to an officer or an employee of the Council, is guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding three months.
 - (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, shall be guilty of an offence and shall 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 Magistrates Courts Act, 1944 (Act No 32 of 1944)
- (2) Any person who, after conviction in terms of these Bylaws, persists in the conduct or neglect which caused the offence, is guilty of a continuing offence and liable to a fine in respect of every day that he or she so persists.
- (3) Any expense incurred by the Council as a result of a contravention of these regulations or in the doing of anything which a person was directed to do under these regulations and which he or she failed to do,

may be recovered by the council from the person who committed the contravention or who failed to do such thing.

20. Repeal

Any by-laws relating to Street Vendors, Peddlers and Hawkers adopted by the municipality or any municipality now comprising an administrative unit of the Municipality is repealed from the date of promulgation of these by-laws

21. Short title

This By-law shall be called the Control of Street Vendors, Peddlers and Hawkers By-law, 2011.