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PROVINCIAL NOTICE

[NO. 205 OF 2011]

NOTICE IN TERMS OF SECTION 14(2)(a)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000: PUBLICATION: STANDARD STREET TRADING BY-LAW

I, M.G Qabathe, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State, 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

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Definitions

1. In these by-laws;
   (a) the singular includes the plural and vice versa;
   (b) any word or expression has the meaning assigned to it in the Local Government: Municipal Structures Act 1998 (Act No. 117 of 1998);
   (c) a reference to any legislation shall be a reference to that legislation and the regulations promulgated thereunder;
   (d) any words or expressions to which a meaning has been assigned in the Businesses Act, 1991 (Act No. 71 of 1991), have a corresponding meaning;

   and, unless the context otherwise indicates:-

   "administrative unit" means a former municipality as contemplated in Section 14(3) of the Municipal Structures Act, 1998 (Act No. 117 of 1998).

   "approval" means approval by the Council and "approved" has a corresponding meaning;

   "authorised official" means-
   (a) an official who has been authorised by the Council to administer, implement and enforce the provisions of these by-laws;
   (b) a traffic officer appointed in terms of Section 3A of the National Road Traffic Act, 1996;
   (c) a member of the police service, as defined in terms of Section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995); or
   (d) a peace officer contemplated in Section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

   "Council services" means any system conducted by or on behalf of a municipality for the collection, conveyance, treatment or disposal of refuse, sewage, or storm water, or for the generation, impounding, storage, purification or supply of water, gas or electricity, or municipal services;

"council" means the Council of the Municipality referred to in Section 18(1) of the Municipal Structures Act, 1998 (Act No. 117of 1998) and includes any duly authorised political structure, political office bearer, councillor and official thereof;
"Council service works" means all property or works of whatever nature necessary for or incidental to any Council services;
"foodstuff" means any article or substance, except a drug as defined in the Drugs and Drug Trafficking Act, 1992(Act No 140 of 1992), ordinarily eaten or drunk by persons 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 of any such article or substance.
"garden or park" means a garden or park to which the public has a right of 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;
"litter" includes any receptacle, container or other matter, which has been discarded, abandoned or left behind by a street trader or by his or her customers;
"Municipality" means the ..... Local Municipality established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with these by-laws by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;
"motor vehicle" means a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996;
"National Road Traffic Act, 1996" means the National Road Traffic Act, 1996 (Act No. 93 of 1996);
"prescribed" means determined by resolution of the Council from time to time;
"property", in relation to a street trader, means any article, container, vehicle or structure used or intended to be used in connection with such business, and includes goods in which he or she trades;
"public building" means a building belonging to or occupied solely by the State or the Council and includes municipal service works;
"public monument" means any one of the public monuments and memorials as defined in the National Heritage Resources Act, 1999 (Act No. 25 of 1999) or any similar legislation;
"public place" means any square, park, recreation ground or open space which is vested in the Municipality or to which the public has the right to use or is shown on a general plan of a township filed in the deeds registry or a Surveyor-General's office and has been provided for the use of the public or the owners of erven in such township;
"public road" means a public road as defined in section 1 of the National Road Traffic Act, 1996;
"roadway" means a roadway as defined in section 1 of the National Road Traffic Act, 1996;
"sell" includes -

(a) barter, exchange or hire out;
(b) display, expose, offer or prepare for sale;
(c) store on a public road or public place with a view to sell; or
(d) provide a service for reward;

and **"sale" or "selling"** has a corresponding meaning;
"sidewalk" means a sidewalk as defined in section 1 of the National Road Traffic Act, 1996;
"street furniture" means any furniture installed by the Council on a street for public use;
"street trader" means a person who carries on the business of street trading and includes any employee of such person;
"street trading" means the selling of any goods or the supplying or offering to supply any service for reward, in a public road, or public place, by a street trader;
"the Act" means the Businesses Act, 1991 (Act No. 71 of 1991) and includes the regulations promulgated thereunder; and
"verge" means a verge as defined in section 1 of the National Road Traffic Act, 1996;

Single act constitutes street trading

2. For the purpose of these by-laws a single act of selling or offering or rendering of services in a public road or public place constitutes street trading.

Assigning powers of a Council employee to employee of a service provider.

3. If any provision in these by-laws vests or imposes any power, function or duty of the Council in or on an employee of the Council, and such power, function or duty has in terms of section 81 (2) of the Local Government: Municipal Systems Act, 2000(Act No 32 of 2000), or any other law been assigned to a service provider, the reference in such provision to such employee must be read as a reference to the service provider or, where applicable, an employee of the service provider authorised by it.

Prohibited conduct

4. (1) No person must carry on the business of a street trader:-
   - (a) at a place or in an area declared by the Council in terms of section 6A(2)(a) of the Act as a place or area in which street trading is prohibited;
   - (b) in a garden or a park to which the public has a right of access;
   - (c) 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;
     - (iii) a building declared to be a Public monument;
     - (iv) an autoteller bank machine;
   - (d) at a place where it causes an obstruction in front of –
     - (i) a fire hydrant;
     - (ii) an entrance to or exit from a building;
   - (e) at a place where it could obstruct vehicular traffic;
   - (f) at a place where it could substantially obstruct a pedestrian in his or her use of the sidewalk;
   - (g) 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 that building objects thereto and such objection is made known to the street trader by an authorised official;
   - (h) on a stand, or in any area demarcated by Council in terms of section 6A(3)(b) of the Act, if he or she is not in possession of a written proof that he or she has hired such stand or area from the Council, or that such stand has otherwise been allocated to him or her ;
   - (i) within 5 (five) meters of any intersection; and
   - (j) on a sidewalk contiguous to a building in which business is being carried on by any person who sells goods of the same or of a similar nature to the goods being sold on such sidewalk by the street trader, if the goods are sold without the prior consent of such person and an authorised official has informed the street trader that such consent does not exist.

   (2) A person who has hired a stand from, or been allocated a stand by the Council in terms of subsection (1)(h), may not trade in contravention of the terms and conditions of such lease or allocation.

Restricted conduct

5. A person carrying on the business of a street trader -
   - (a) may not sleep overnight at the place of such business;
   - (b) may not erect any structure for the purpose of providing shelter, other than a device approved by the Council;
   - (c) may not place his or her property on a public road or public place, with the exception of his or her motor vehicle or trailer from which trade is conducted, and provided that such vehicle or trailer does not obstruct pedestrian and vehicular traffic movement, and complies with the provisions of the National Road Traffic Act, 1996;
   - (d) must ensure that his or her property or area of activity does not cover an area of a public road or public place which is greater in extent than six square metres (with a maximum length of three metres) or unless otherwise approved by the Council, and which on any sidewalk leaves an unobstructed space for pedestrian traffic, the length of the property or area of activity, and not less than 1,5 metres wide, measured from any contiguous building to the obstructed area, and an unobstructed space, the length of the property or area of activity, and not less than 0,5 metres wide, measured from the kerb of the roadway;
   - (e) may not trade on a sidewalk where the width of such sidewalk is less than three metres;
   - (f) may not place or stack his or her property in such a manner that it constitutes a danger to any person or property, or is likely to injure any person or cause damage to any property;
   - (g) may not display his or her goods or other property on or in a building, without the consent of the owner, lawful occupier, or person in control of such building or property;

(h) must, upon request by an authorised official of the Council, or supplier of telecommunication or electricity or other council services, move his or her property so as to permit the carrying out of any work in relation to a public road, public place or any such service;

(i) may not attach any of his or her property by any means to any building, structure, pavement, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public place;

(j) may not carry on such 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 public or private property; or

(iii) create a traffic and/or health hazard, or health risk, or both.

(k) may not make an open fire on a public road or public place;

(l) may not interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window, or obscure such goods from view.

(m) may not obstruct access to a pedestrian crossing, a parking or loading bay or other facility for vehicular or pedestrian traffic;

(n) may not obstruct access to, or the use of, street furniture and any other facility designed for the use of the general public;

(o) may not obscure any road traffic sign displayed in terms of the National Road Traffic Act, 1996, or any marking, notice or sign displayed or made in terms of these by-laws;

(p) may not carry on business, or take up a position, or place his or her 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 purposes of these by-laws;

(q) may not, other than in a refuse receptacle approved or supplied 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 any public road or public place or on any public property;

(r) may not place on a public road or public place his or her property that is not capable of being easily removed to a storage place away from such public road or public place, at the end of the day's business;

(s) must on concluding business for the day remove his or her property, except any structure permitted by the Council, to a place which is not part of a public road or public place;

(t) may not store his or her property in a manhole, storm water drain, public toilet, and bus shelter or in a tree;

(u) may not handle any foodstuffs including meat in a manner contrary to applicable law;

(v) may not carry on such business in a place or area in contravention of any prohibition or restriction approved by the Council in terms of section 6A(2)(a) of the Act.

Cleanliness

6. A street trader must -

(a) keep the area or site occupied by him or her for the purposes of such business in a clean and sanitary condition;

(b) keep his or her property in a clean, sanitary and well maintained condition;

(c) dispose of litter generated by his business in whatever receptacle as provided by the Council for the public or at a dumping site of the Council;

(d) not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;

(e) ensure that on completion of business for the day, the area or site occupied by him or her for the purposes of trade is free of litter;

(f) take such precautions in the course of conducting his or her business as may be necessary to prevent the spilling onto a public road, or public place, or into a storm water drain, of any fat, oil or grease;

(g) ensure that no smoke, fumes or other substance, odours, or noise emanating from his or her activities causes pollution of any kind;

(h) on request by an authorised official of the Council, move his or her property so as to permit the cleansing of the space of the area or site where he or she is trading, or the effecting of council services.

Signs indicating restricted and prohibited areas

7. (a) The Council may, by resolution and in terms of section 6A(2) of the Act, declare any place in its area of jurisdiction to be an area in which street trading is restricted or prohibited, and must, to enable compliance therewith, prescribe or make signs, markings or other devices indicating-

(i) specified hours, places, goods or services in respect of which street trading is restricted or prohibited;
(ii) the locations of boundaries of restricted or prohibited areas;
(iii) the boundaries of a stand or area set apart for the purposes of the carrying on of the business of street trading;
(iv) the fact that any such stand or area has been let or otherwise allocated; and
(v) any restriction or prohibition against street trading in terms of these by-laws;

(b) The Council may display any such sign, marking or device in such a position and manner as will indicate any restriction or prohibition and or the location or boundaries of the area or stand concerned;

(c) Any sign erected in terms of these by-laws or any other law, must serve as sufficient notice to a street trader of the prohibition or restriction of the area concerned; and

(d) Any sign may be amended from time to time and displayed by the Council for the purpose of these by-laws, and any such sign shall have the same effect as a road sign in terms of the National Road Traffic Act, 1996.

Provision of and lease of stands or area for the purpose of street trading

8. (1) The Council may, by resolution in terms of Section 6A (3)(a) to (c) of the Act-
(a) lease any municipal land to the owner or occupier of contiguous land on condition that such owner or occupier must admit a specified number of street traders to trade on stands or places on such land designated by such owner or occupier for informal trading;
(b) set apart municipal land in the municipality and demarcate stands or areas on such land for the purpose of informal trading;
(c) extend, reduce or disestablish any stand or area referred to in the previous subsections.

(2) Any land leased by or allocated by the Council aforesaid for informal trading must be so let on an economic rental basis.

(3) These by-laws must apply to any informal trading area established by the Council in terms of this section.

(4) The Council may, in addition to setting aside land in its municipal area for informal trading, also make available to informal traders, subject to such conditions as it may determine, suitable structures, shelter and devices for the conduct of the business of informal trading

Removal and impoundment

9. (1) An authorised official may remove and impound any property, except perishable foodstuffs, of a street trader-
(a) which he or she reasonably suspects is being used or which intended to be used or has been used in or in connection with street trading; and
(b) which he or she finds at a place where street trading is restricted or prohibited and which constitutes an infringement of any such restriction or prohibition whether or not such property is in possession or under the control of any person at the time of such removal or impoundment.

(2) Any authorised official acting in terms of subsection (1) above must, except where goods have been left or abandoned, issue to the person carrying on the business of a street trader, a receipt for any property so removed and impounded, which receipt must -

(i) itemise the property to be removed and impounded;
(ii) provide the address where the impounded property will be kept, and the period thereof;
(iii) state the conditions for the release of the impounded property;
(iv) state the terms and conditions relating to the sale of unclaimed property by public auction; and
(v) provide the name and address of a council official to whom any representations regarding the impoundment may be made, and the date and time by which this must be done.

(3) If any property about to be impounded is attached to any immovable property or a structure, and such property is under the apparent control of a person present thereat, any authorised official of the Council may order such person to remove the property, and if such person refuses or fails to comply, he or she is guilty of an offence.

(4) When any person fails to comply with an order to remove the property referred to in subsection (3), any authorised official of the Council may take such steps as may be necessary to remove such property.

(5) Perishable foodstuffs must be retained by the street trader who must immediately remove such foodstuffs from the prohibited trading area.

(6) The Council may provide sufficient and adequate storage facilities for the storage of any property impounded in terms of this section.

Vicarious responsibility of persons carrying on business

10. (1) When an employee or agent of a street trader contravenes a provision of these by-laws, the street trader is deemed to have committed such contravention himself or herself unless he or she satisfies the court that he or she took reasonable steps to prevent such contravention.

(2) The fact that a street trader issued instructions to the employee or agent prohibiting such contravention, does not, in itself, constitute sufficient proof of such reasonable steps.

Offences and Penalties

11. (1) Any person who -

(a) contravenes or fails to comply with any provision of these by-laws;

(b) fails to comply with any notice issued in terms of these by-laws; or

(c) fails to comply with any lawful instruction given in terms of these bylaws; or

(d) fails to comply with any condition imposed by the Council in any authorisation or permit granted under these by-laws; or

(e) who obstructs or hinders any authorised official of the Council in the execution of his or her duties under these by-laws –

is guilty of an offence and liable on conviction to a fine or in default of payment, to imprisonment for a period not exceeding six months, and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment, to imprisonment not exceeding one day, for every day during the continuance of such offence, after a written notice has been issued by the Council, and served on the person concerned, requesting the discontinuance of such offence.

(2) A court sentencing a street trader who is found guilty of a contravention of these by-laws may also order such street trader to pay to the municipality such reasonable costs it may have incurred in impounding and storing any goods impounded under these by-laws.

Repeal of By-laws

12. Any by-laws relating to Street or Informal Trading 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.

Short title

13. These by -laws are called the Street Trading By-laws, 2011.