



## **STREET TRADING BY- LAW**

**The Municipal Manager of the Molemole Local Municipality hereby, in terms of Section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) read together with section 162 of the Constitution of the Republic of South Africa, publishes the Street Trading By-law for Molemole Local Municipality, as approved by its Council in terms of section 6A of the Businesses Act, 1991 (Act No. 71 of 1991), as set out hereunder.**

## DEFINITIONS

In these by-laws, in these by-laws any word or expression to which a meaning has been assigned in the Businesses Act, 1991 (Act No 71 of 1991), shall have such meaning, unless the context indicates otherwise except as otherwise expressly provided:-

**“Act”**- means the Business Act 71 of 1991(as amended) including any regulations issued thereunder

**“Approval”** means approval by the Council and “approve” has a corresponding meaning.

**“Authorized officer”** means –

(a) A traffic officer appointed under section 3 of the Road Traffic Act, 1989 (Act No 29 of 1989) as amended; or

(b) A member of the force as defined in section 1 (1) of the Police Act, 1958 (Act No 51 of 1958) as amended; or

(c) A peace officer as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No 51 of 1977) as amended;

(d) An inspector appointed in terms of section 53 of the Health Act.

**“Authorized emergency vehicle”** means a vehicle driven by authorized officer in the execution of his/her duties;

**“Child”** means a person under the age of sixteen (16) years;

**“Council”** means the Council of the Molemole Local Municipality, established in terms of section 12 of the Local Government: Municipal Structures Act, no 117 of

1998; as amended, exercising its legislative and executive authority through its municipal Council; or

(b) its successor in title; or

(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 contemplated in section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); or

(d) a service provider fulfilling a responsibility under these by-laws, assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000, or any other law, as the case may be.

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

**“Goods”** means any movable property or merchandise displayed or kept by a person in a public place or public road for the purpose of carrying on the business, and this includes any article, containers, vehicle, receptacle or removable structure;

**“Informal trader”** means a person, or an enterprise which is not registered or incorporated in terms of the corporate laws of South Africa and which engages in informal trading;

**“Informal trading”** means the trading in goods and services in the informal sector by an informal trader;

**“Market”** means a demarcated area within a trading area which is designated as such in a trading plan and which is managed in a co-ordinated manner;

**“licensing officer”** means an inspector of licenses, examiner of vehicles, examiner of driving licenses, or traffic officer, and also any other person declared by the Minister of Transport by regulation made in terms of the National Road Traffic Act be an authorized officer;

**“Litter”** means any containers or other waste matters that has been discarded or left behind by the person trading or his/her customer in or near the place where such person trades.

**“Municipal area”** means the area that falls under the council’s jurisdiction;

**“Municipality”** means Molemole Local Municipality

**“Officer”** means:

- a traffic officer appointed under section 3 of the National Road Traffic Act 93/1996;
- a member of the South African Police Service appointed in terms of Act No 68 of 1995; or
- a peace officer contemplated in section 334 of the Criminal Procedure Act, 1997( Act No 51of 1977)

**“Park”** includes any square or other open or enclosed space to which the general public has a right of access;

**“Permit-holder”** means an informal trader who has been granted a permit by the Council/Municipality to conduct informal trading at a designated area;;

**“Prohibited area”** means a place declared in terms of section 6A (2) of the act to an area of in which street trading is prohibited;

**“Property”** means in relation to a person carrying on the business of a street trader, any article, receptacle, vehicle or structure used or intended to be used in connection with such business and includes the goods of such a business;

**“Public amenity”** means:-

- any land, square, swimming bath, public resort, creation site, park, public road, road reserve, reserve street, lake, dam or river;
- any building, structure, hall, room or office including any part thereof and any facility or apparatus therein, which is property of, or possessed, controlled or leased by the municipality and to which the general public has access whether on payment of admission fees or not;

**“Public road”** means any road, street, or thoroughfare or any other place 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 such road, street or thoroughfare;
- Any bridge, ferry or drift traversed by any 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;

**“Sell”** shall mean:

- Offer to render a service or sell goods
- Barter exchange or hiring out

- Display, expose, offer or prepare for sale
- Store with a view to sell
- Provide a service for reward and “ sale” and “selling” has a corresponding meaning;

“**Services**” shall mean any advantages or gain for consideration or reward;

“**Sidewalk**” means that portion of a verge intended for the exclusive use of pedestrians;

“**Special events**” may include, but are not limited to, sports events, night markets, cultural events, music festivals, promotional and religious events;

“**Street furniture**” means any furnisher installed by the Municipality on the street for public use;

“**Street trader**” means a person selling goods or rendering a service and includes a seller, peddler, or hawker and also;

A person who is a principal, agent, assistant or employee carries on the business of street trading; and

A person to whom a stand has been leased or allocated for as long as the person is carrying on the business of a street trader;

“**Trade**” means to sell goods or services on a public road or public place and “trading” or “street trading” has a corresponding meaning.

“**Verge**” means that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway or the shoulder.

## **Preamble of this by law**

## **2. PROHIBITION OF CARRYING ON OF BUSINESS**

2.1 No person shall in the municipal area carry on the business of a street vendor or trading –

2.1.1 In a garden or park to which the public has a right of access except where special permit has been granted by an authorized officer;

2.1.2 On a verge contiguous to –

(a) a building belonging to or occupied solely by the state or the Council concerned;

(b) a church or other place of worship; or

(c) a heritage/site in terms of the National Heritage Resources Act, 1999 (Act No 25 of 1999)

(d) an auto teller machine; except to the extent that the carrying on of such business is permitted by a sign erected or displayed by the Municipality and in compliance therewith;

(e) In an area declared by the Municipality as a prohibited or restricted area in terms of section 8 of these by-law.

2.2 In an area declared by the Council as prohibited area in terms of section 6A (2) of the Act, excluding a kiosk leased by virtue of an agreement as contemplated in section 3;

- 2.3 At a place where –
  - 2.3.1 It causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;
  - 2.3.2 It causes an obstruction to vehicular traffic; or
  - 2.3.3 It substantially obstructs pedestrians in their use of the sidewalk.
- 2.4 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 to it;
- 2.5 On a verge so defined contiguous to a building in which business is carried out by any person who sells goods of the same nature as/or similar nature to goods being sold by the street vendor concerned without the consent of that person;
- 2.6 In a public amenity;
- 2.7 On a stand or in any area demarcated by the municipality in terms of section 6A (3) (b) of the Act if he/she is not in possession of written proof that he/she has rented such stand or area from the municipality or what such stand has been allocated to him; nor shall he/she trade in contravention of the terms and conditions of such lease or allocations;
- 2.8 Within five meters of any intersection as defined in Regulation 322 of the National Road Traffic Act 93 of 1996.

### **3. PRODUCTS AND SERVICES PROHIBITED**

3.1 No person shall in the municipal area be allowed to carry on the business of a street vendor or trading of the following products or services:

- 3.1.1 sale or any trade of flammable liquids ;
- 3.1.2 trade involving any illegal activities i.e. drugs;
- 3.1.3 Repair of motor vehicles;
- 3.1.4 Sale of liquor or any intoxicating substances;
- 3.1.5 Harmful chemicals, poisons and defoliants;
- 3.1.6 Sale of raw material.

#### **4. CONDITIONS UNDER WHICH STREET TRADING WILL BE PERMITTED;**

4.1 Street trading, in respect of both products and services will be allowed subject to the street vendor complying with the following:

- 4.1.1 To the street vendor keeping his/her stand property or the surrounding area and goods, for the purpose of street trading in a clean and sanitary condition;
- 4.1.2 The street vendor shall not dispose-off any litter and refuse by placing it in a manhole, storm water drain or any other place not intended for the disposal of litter.
- 4.1.3 The street vendor shall ensure that on completion of business for the day the designated area or stand occupied by him/her is clean and free of litter and refuse.
- 4.1.4 Take the necessary precautions to prevent the spilling onto a public road or public place of any fat, oil or grease in the course of conducting his/her business and must further prevent smoke, fumes and odours emanating his/her activities.
- 4.1.5 On request by an authorized official removes his/her goods and property to permit the cleaning of the stand if necessary.
- 4.1.6 That such vending is conducted within a demarcated area.
- 4.1.7 That the vendor possesses a valid permit issued by the municipality.
- 4.1.8 Thorough checks will be done when issuing permits in order to curb problems like fronting.

#### **5. RESTRICTED CONDUCT**

5.1 the street vendor shall not place his/her property or goods on a verge or public place except for the purpose of commencing trade and shall-;



- 5.1.1 Ensure that his/her property or goods do not cover an area of a public road or public place in excess of 3m<sup>2</sup> without the written consent of the Municipality;
- 5.1.2 Not place or stack his/her property and goods in such a manner that it constitutes a nuisance or danger to any person, or property, or is likely to injure any person or cause damage to property
- 5.1.3 On concluding his/her business activities for the day, remove all his/her property and goods except any structures allowed by the Municipality to a place which is not part of a public place or public road;
- 5.1.4 On request by an authorized official of the Municipality or suppliers of electricity, communication, or other service in relation to a public road or public place or public road not attach any object by any means to any building, structure, sidewalk, tree, parking meter, lamp-pole, electricity pole, telephone pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public place;
- 5.1.5 Not make a fire in any place or in circumstances where it could cause injury or loss to a person, building, vehicle, or street furniture;
- 5.1.6 Not store his/her property and goods in a manhole, storm water drain or a public toilet, bus or taxi shelter or tree;
- 5.1.7 Not sleep overnight at the place of such business;
- 5.1.8 Not erect any structure for the purpose of providing shelter, other than a structure approved by Municipality.
- 5.1.9 Not display his/her property on or in a building, without the consent of the owner, lawful occupier or person in control of such building or property;
- 5.1.10 Not obstruct access to pedestrian crossing, parking or loading bays or other facilities for vehicular or pedestrians;
- 5.1.11 Not carry on business in such a manner as to
  - (i) Create a nuisance;
  - (ii) Damage or deface the surface of a public road or public place or any public or private property,
- 5.1.12 Create a traffic and or health hazard or health risk, or both;

- 5.1.13 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;
- 5.1.14 Not carry on business, or take up a position, or place his /her property on a portion of a sidewalk or public place, in contravention of a sign or notice erected or displayed by the Council for the purpose of these by-laws;
- 5.1.15 May not erect any structure for the purpose of providing shelter;
- 5.1.16 May not place or store his/her property in a public place, with the exception of his/her motor vehicle or retailer from which trade is conducted, and provided that such vehicle or retailer does not obstruct pedestrian and vehicle traffic movement, and complies with the provision of the National Road Traffic Act, 1996;
- 5.1.17 May not carry on such business in a place or areas in contravention of any prohibition or restriction approved by Council in terms of section 6A (2) (a) of the Business Act and street vending policy;
- 5.1.18 By-laws and pertinent regulating instruments will be enforce in order to control attempts by big business to use street vending to minimize costs at the expense of small businesses;

## **6. APPLICATION TO LEASE A KIOSK**

6.1 Any person who intends to carry on business of a street vendor shall annually apply to the Municipality in the prescribed manner to Council for the lease of a kiosk at the prescribed tariff. Council will consult with the chairperson of the relevant Hawkers Associations, if any, on such applications before considering the application.

6.2 If such application is successful –

6.2.1 The street vendor must at all times comply with the rules and conditions determined by Council as indicated on the reverse side of the receipt issued to the applicant for the prescribed monthly rental tariff of such kiosk.

6.2.2 A certificate will be issued to the street vendor as proof of the person's right to occupy such stand or designated area for the

purpose of carrying on business as contemplated in section 2 (1) (c);

6.2.3 The street vendor must while carrying on business on the stand retain such certificate on his or her person ready to produce same to any authorized officer on request;

6.3A street vendor 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 subsection (6.2.3) shall with the necessary changes be applicable to such an employee.

6.4A person who carries on the business of a street vendor from a kiosk and who is unable to produce a certificate as contemplated in subsection 2 (b) or a license as contemplated in subsection 2 (4) of the Act will be guilty of an offence.

6.5 Should a person enter into a lease agreement for the lease of a kiosk referred to in subsection (6.1) 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 three days written notice to make payment and person persist in such non-payment and such person shall thereupon immediately return the certificate meant in subsection (2)(b) to the Council.

## **7. APPLICATION AND ALLOCATION OF A PERMIT**

7.1 Any person who intends to carry on a business as a street trader or vendor in terms of the provisions of the Act must apply to the Municipal Council in the prescribed manner for the allocation of a stand in terms of section 6 (A) (3) (c) of the Act.

7.2 The Council may grant, subject to conditions or refuse an application.

7.3 If such application is successful, the street trade must, in respect of the allocation of such stand, will be given a valid permit which must be produced on the request of an authorized officer.

7.4 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 as contemplated in section 8.2 of these by-laws.

7.5 street trader must, while carrying on business on the stand, retain such permit on their person ready for display to any authorized officer who request it; and

7.6 A person who carries on the business of a street trader on a stand and who is unable to produce a valid permit, as contemplated in section 6.3.1, shall be guilty of an offence.

7.7 Permits are non-transferable.

7.8 No person under the age of 16 shall be found trading in or near a public roads or place.

7.9 Any person who employs a child shall be guilty of an offence.

7.10 No person may conduct informal trading on Municipal property in a trading area without a valid permit from the Municipality.

7.11 The Municipality is entitled to charge a permit- holder or applicant:

- (a) a trading fee;
- (b) an application fee;

7.12 An additional fee or tariff, which is to be determined by the Municipality in its sole discretion, in respect of additional costs or services provided where the permit- holder trades within a market.

7.13 In the event that a person qualifies for a permit, but has motivated in writing the inability to pay the fee contemplated in section 7.2 the Municipal Manager may determine a payment system in terms of which the person may pay the fee over a stipulated period by way of instalments.

7.14 In order to qualify for a permit, the applicant-

- (a) must be an informal trader;
- (b) may not already hold a permit in respect of the trading area in respect of which a permit is being applied;
- (c) 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
- (d) must not employ and actively utilise the services of more than two (2) persons.

7.15 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 informal 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 minds the nature of the businesses within that trading area or in its immediate vicinity;
- (d) the need to give preference to unemployed applicants;
- (e) whether the applicant has, in terms of this By-Law been committed an offence and/or had a permit revoked or suspended;

7.16 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 informal trader an alternative bay in the same trading area;

(c) Specify the type of structure(s), if any, which may be erected on a trading bay and/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 prior notice to the informal trader and after affording the relevant informal trader an opportunity to make oral or written representations, revoke or suspend a permit in the event of an informal trader-

- (i) Breaching any provision of the permit and/or the By-Law;
- (ii) Being convicted of trading in illegal goods or providing a service unlawfully;

- (iii) Wilfully supplying incorrect information when required to provide the Municipality with information;
- (f) The Municipality has the right to, upon reasonable prior notice to the informal 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. 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.

## **8. IMPOUNDMENT AND REMOVAL**

8.1 Any authorized officer may impound and/or remove any goods –

- (a) which on reasonable grounds, he or she suspects are being used or are intended to be used or have already been used in connection with the carrying on of the business of an unauthorized street vendor; or
- (b) which he or she finds in a park or on a public road and which in his or her opinion, constitutes an infringement of these by-laws whether or not such goods are in the possession of or under the control of any person at the time of such impoundment and/or removal
- (c) Any goods of a perishable nature, including plants and flowers, will be kept for 24 hours after confiscation and if of no value, they shall be disposed.

8.2 An authorized officer shall on request, issue a receipt to the person who appears to be in control of the goods concerned. Any goods shall be marked in a suitable manner and kept in safe custody pending the institution of criminal proceedings and will be disposed of in accordance with the Criminal Procedure Act, Act 51 of 1977.

## **9. OFFENCES**

9.1A street vendor or any other person who contravenes or fails to comply with the provisions of these by-laws, threatens, resists, interferes with or obstructs any officer or any employee of the municipality in the performance of official duties or functions in terms of or under this By-Law; or deliberately furnishes false or misleading information to an officer or an employee of the municipality shall be guilty of an offence and shall be liable on conviction –

(a) to a fine not exceeding **R1 000-00** or imprisonment for a period not exceeding three months, or to both such fine and such imprisonment;

(b) to an additional fine not exceeding **R100-00** for every day on which the offence continues.

## **10. REPEAL**

This by law repeals all previous streets trading by law.

## **11. SHORT TITLE AND COMMENCEMENT**

The By-Law is called the **Street Trading by- laws for Molemole Local Municipality, 2022** and shall come to force and effect upon promulgation in the provincial government gazette