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LOCAL AUTHORITY NOTICE

LOCAL AUTHORITY NOTICE 104

NELSON MANDELA BAY METROPOLITAN MUNICIPALITY STREET TRADING BY-LAWS

In terms of and under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Nelson Mandela Bay Metropolitan Municipality, enacts as follows:-

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1. Definitions

(1) In this by-law, unless the context otherwise indicates –

“**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;

“**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 (Act 93 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 –

- (a) the Nelson Mandela Bay Metropolitan Municipality, and includes any political structure, political office bearer, councilor, duly authorised agent thereof or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated

or sub-delegated to such political structure, political office bearer, councilor, agent or employee; or

- (b) A service provider fulfilling a responsibility under this by-law, 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;

“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 act, omission or condition which is offensive or dangerous, or which materially interferes with the ordinary comfort, convenience, peace or quiet of other people or which affects, or may affect, the safety of the public;

“official” means a designated officer who is authorized by the municipality to perform and exercise any or all of the functions and powers contemplated in this by-law;

“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” means prescribed by the municipality by 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 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 or thoroughfare or any other place (whether a thoroughfare or not) 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-

- (a) the verge 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 belonging to such road, street or thoroughfare;

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

“**sell**” includes barter, exchange, hire out, display, expose, offer or prepare for sale, store with a view to sell, or 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 (Act 93 of 1996);

“**street furniture**” means any furniture installed by the municipality on the street for public use;

“**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 a newspaper vendor;

“**street trading**” means the carrying on of the business as a street trader;

“**verge**” means a verge as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996), and any words or expressions to which a meaning has been assigned in the Businesses Act, 1991, (Act 71 of 1991) have a corresponding meaning in this by-law.

(2) A single act of selling or offering or rendering of services in a public road or public amenity constitutes street trading.

(3) A reference to a person carrying on the business of street trader includes the employee of the person.

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 Nelson Mandela Bay Metropolitan 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 Nelson Mandela Bay Metropolitan Municipality.

CHAPTER 1: GENERAL PROVISIONS APPLICABLE TO STREET TRADING**4. 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.

5. Places where street trading is prohibited

- (1) Unless the municipality has so permitted in terms of an agreement or by means of the display of a sign, no person may carry on the business of a street trader in any of the following places:
- (a) In a garden or a park to which the public has a right of access; or
 - (b) on a verge contiguous to –
 - (i) a building belonging to, or occupied solely by the State or the municipality;
 - (ii) a church or other place of worship; or
 - (iii) a building declared to be a public monument under the National Heritage Resources Act, 1999.
- (2) No person may carry on the business of a street trader in any of the following places:
- (a) in a place declared by the municipality under section 6A(2)(a) of the Act as a place in which street trading is prohibited;
 - (b) at a place where street trading obstructs the use of the sidewalk by pedestrians or interferes with the ability of persons using the sidewalk to view the goods displayed behind a shop display window or obscures such goods from view.
 - (c) within 5 metres of an intersection as defined in Regulation 322 of the National Road Traffic Regulations published under GN R225 in GG 20963 of 17 March 2000 in terms of the National Road Traffic Act, 1996 (Act 93 of 1996);
 - (d) at a place where street trading obstructs –
 - (i) a fire hydrant;
 - (ii) the entrance to, or exit from, a building;
 - (iii) vehicular traffic;

- (iv) access to a pedestrian crossing, a parking or loading bay or any other facility for vehicular or pedestrian traffic;
 - (v) access to, or the use, of street furniture or any other facility designed for the use of the general public;
 - (vi) or obscures a road traffic sign that is displayed in terms of the National Road Traffic Act, 1996; or
 - (vii) or obscures a marking, notice or sign displayed or made in terms of this by-law;
- (e) on that half of a public road contiguous to a building which is used for residential purposes, if the owner or person who is in control or any occupier of the building objects thereto;
- (f) 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
- (g) within ten meters (10m) of the entrance to a financial institution or electronic banking facility.
- (3) 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.

6. Duties of street trader

- (1) A street trader must –
- (a) when he or she concludes business for the day, remove his or her property, except if stored in any structure approved and permitted by the municipality, to a place which is not part of a public road or public amenity;
 - (b) when requested by an official of the municipality or a by a person who has been authorized to provide municipal services, move his or her property so as to permit the official or other person to carry out any work in relation to a public road, public amenity or service;
 - (c) keep the area or stand occupied by him or her in a clean and sanitary condition;
 - (d) ensure that the area is free of litter at all times, and must, when he or she concludes business for the day, dispose of litter generated by his or her business in receptacles provided by the municipality for the public;
 - (e) on request by an official of the municipality, move his or her property so as to permit the cleansing of the area where he or she is trading;
 - (f) regarding the size and location of the area or stand occupied by him or her, –
 - (i) ensure that the area which he or she uses does not exceed 6 m² in size and not exceed 3 metres in length;

- (ii) ensure that a space of not less than 1,5 metres is left between the wall of the shop (contiguous to which he or she conducts his or her business) and himself or herself; and
 - (iii) leave a space of not less than 0,5 metre from the kerb of the roadway.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

7. Prohibited conduct

- (1) A street trader –
- (a) may not sleep or overnight at the area where he or she is trading, or at the area where another street trader is trading;
 - (b) may not place or stack his or her property in such a manner that it –
 - (i) constitutes a danger to any person or property; or
 - (ii) is likely to injure any person or cause damage to any property;
 - (c) may not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
 - (d) may not release onto a public road or public amenity or into a storm water drain any fat, oil or grease in the course of conducting his or her business;
 - (e) may not allow smoke, fumes, noise, smells, or other substance arising from his or her activities to cause a nuisance or pollution of any kind;
 - (f) may not erect a structure for the purpose of providing shelter, except for a temporary structure to provide shelter against the weather in which case the said shelter must be removed at the end of the day's business;
 - (g) may not place his or her property on the surface of a public road or in a public amenity;
 - (h) who conducts his or her business from a vehicle, may not park the vehicle or trailer in such a manner as to obstruct pedestrian or vehicular traffic and must ensure that he or she complies with the provisions of the National Road Traffic Act, 1996;
 - (i) 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;
 - (j) may not attach an object by any means to a building, structure, sidewalk, 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 amenity;
 - (k) may not carry on his or her business in such a manner as to –
 - (i) create a nuisance;
 - (ii) damage or deface the surface of a public road or public amenity or public or private property; or
 - (iii) create a traffic hazard;
 - (l) may not make an open fire that poses a health or environment hazard to any person or property or to street furniture;
 - (m) may not, other than in a refuse receptacle approved or supplied by the municipality, accumulate, dump, store or deposit any litter on –
 - (i) any land or premises;
 - (ii) any public road or public amenity or;
 - (iii) any public or private property;

- (n) may not store his or her property in a manhole, storm water drain, public toilet, bus shelter, on the median between traffic lanes or in a tree; and
 - (o) may not carry on such business in a place or area in contravention of any prohibition or restriction approved by the municipality in terms of section 6A(2)(a) of the Act;
 - (p) may not trade in front of a formal business in goods that are similar to any goods offered for sale by such formal trader; and
 - (q) may not allow children under the age of sixteen to accompany him or her trade on his or her behalf where they will be operating on a public road.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

8. Removal and impoundment

- (1) An official who reasonably suspects that property is being used or intended to be used in, or in connection with, street trading, whether or not the property is in possession or under the control of any person may, subject to subsection (2), remove and impound the property 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.
- (2) An official who acts under subsection (1) must, except in the case of goods that have been left or abandoned, issue to the street trader a receipt for the property so removed and impounded and the receipt must contain the following particulars:
- (a) the address where the impounded property will be kept and the period it will be kept;
 - (b) the conditions for the release of the impounded property; and
 - (c) that unclaimed property will be sold by public auction.
- (3) If any impounded property is attached to immovable property or a structure, and the impounded property is under the apparent control of a person present at that place, an official may order the person to remove the impounded property.
- (4) When a person fails to comply with an order to remove the impounded property, an official may take such steps as may be necessary to remove the impounded property.
- (6) A person who hinders or obstructs an official in the performance of his or her duties under this section, or who refuses or fails to remove the object when ordered to do so by an official, commits an offence.

9. Disposal of impounded goods

- (1) Any perishable foodstuffs removed and impounded in terms of section 8(1) may at any time after the impoundment thereof be sold or destroyed by the municipality and in the case of a sale of such perishable foodstuffs, the proceeds thereof, less any expenses incurred by the municipality in connection with the removal and impoundment thereof, shall upon presentation of the receipt contemplated by section 8(2)(a), be paid to the person who was the owner thereof when it was impounded. If such owner fails to claim the said proceeds within three months of the date on which it was sold, the proceeds may be forfeited to the municipality.
- (2) The owner of any goods other than perishable foodstuffs already dealt with by the municipality in terms of subsection (1) who wishes to claim the return thereof must, within a period of one month of the date of the impoundment thereof, apply to the municipality and must present the receipt contemplated in section 8(2)(a), failing which the goods may be sold by the municipality, and in the event of a sale thereof the provisions of subsection (1) relating to the proceeds of a sale likewise apply to the proceeds of the sale.

(3) If the owner of any goods impounded in terms of section 8(1) claims the return of the goods from the municipality and he or she is unable or refuses to refund any expenses incurred by the municipality in connection with the removal and impoundment, the goods may be sold by the municipality and the proceeds of any sale thereof, less any expenses shall be paid to him or her.

(4) In the event of the proceeds of any sale of goods contemplated by this section not being sufficient to defray any expenses incurred by the municipality, the owner thereof shall in terms of section 8(3)(a) remain liable for the difference.

10. 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.

CHAPTER 2: MISCELLANEOUS PROVISIONS

11. Penalty

A person who has committed an offence in terms of these by-laws is, on conviction, and subject to penalties prescribed in any other law, liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

12. 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.

13. 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.

14. 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 submit input to the municipality for consideration.

15. Revocation of by-laws

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in these By-laws.

16. Short title and commencement

This by-law may be cited as the Nelson Mandela Bay Metropolitan Municipality Street Trading By-law and commences on the date of publication thereof in the Provincial Gazette.
