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## CONTAINER POLICY

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Signed

WJ Khumalo

City Manager

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Date



# CONTAINER POLICY

## CITY OF MBOMBELA CONTAINER POLICY

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## CITY OF MBOMBELA CONTAINER POLICY

### Abbreviations

**CBD** - Central Business District

**CoM**- City of Mbombela

### Definitions

**Container Trading** - Trading in structures including caravans, containers, marquees, trailers, and Wendy Houses.

**Container Traders** - Informal traders who conduct their trade in structures including caravans, containers, marquees, trailers and Wendy Houses.

## **1. Introduction**

The City of Mbombela (CoM) encourages and supports opportunities for informal traders on sites that are properly managed and monitored through effective integration from different City departments (i.e officially demarcated spaces). Trading opportunities should be developed and properly planned as part of the Business Regulation & Governance Unit's strategy for job creation.

The Informal Economy has a diverse combination of informal traders in different sectors and they use different resources to generate revenue. Informal traders use movable structures as trading resources and these resources differ from tables, caravans to steel containers. Traders in movable roofed structures have been operating without proper guidelines and mechanisms from the City of Mbombela; herein referred to as Council.

The Container Policy is aimed at providing a guideline for the support, management and monitoring of the informal traders who trade in roofed movable structures; herein referred to as Container Trading; that are located in most economic sites in all the areas of the Council. The structures included in this policy are Caravans, Containers, Wendy Houses, Trailers and any other Roofed Movable Structures used for informal trade.

The Container Policy is applicable to all Council Urban, Townships, Rural and CBD areas.

The policy encompasses:

- The provision of economic sites to traders who trade in the identified structures
- The integrated management system between the City's departments
- Mechanisms for managing and monitoring trading activities
- The registration of traders who trade in the identified structures

## **2. Background**

Informal traders are required to get permission in the form of a permit to trade in any area of the Council. Itinerant traders require permission to trade in their commodities and resident traders require permission to lease the land in which they provide their trade. Resident traders use different structures to conduct their trade including caravans, containers, marquees, Wendy houses, trailers and even cement structures. Most of the trader/s never entered into any agreement with the Council to use the land and/or the above mentioned structures for trading.

Council never issued resident container traders with permits to lease the land and the containers on which they conduct trade. The placement of containers on road verges therefore has never been authorised by Council. Council does not have control over the activities that are conducted in the containers as traders placed containers on pavements and road verges causing pedestrian and vehicular traffic. It has been established that some traders are using the containers to conduct illegal activities and using them as accommodation. Container trading is continuing unmonitored with new entrants operating without Council's authorisation as the old ones are also operating without Council authorisation.



The placement of the containers on road verges have created a perception to the public that any person can engage in container trading without reference and authorisation from Council. Container trading is continuing within the City without clear controls on the size, design, condition and maintenance of containers which as a result clashes with the aesthetics requirements of the City.

The traders had no access to water, toilets and waste disposal facilities which led to unhygienic conditions. Containers are placed without proper regard to the number of street traders already in an area, the type of product sold, the facilities and products being provided by commercial/industrial companies for their employees.

Council removed illegal container traders in the CBD as a mechanism to clamp down on the proliferation of illegal traders and the undesirable effects of container trading. Container trading continued uncontrolled in other parts of the City outside the CBD especially in urban residential and rural areas. This is undesirable and contribute to decay in those areas.

The placement of containers on road verges encourages the upliftment of street traders but it needs to be properly controlled and managed. The Business Regulation & Governance Unit has developed the Container Policy to be applicable to all areas of the City. This policy addresses the lack of proper control and management regarding the placement and conditions of container trading.

### **3. Policy Development Process**

The policy development process is a cycle including firstly the identification of the issues and needs to be addressed by the policy, the assessment of the policy issues, the policy document, implementation and constant evaluation and review.

The current conditions and challenges involved in container trading is just what is being observed and/or what is happening and is clear in the eyes of the public. A full survey needs to be conducted to establish the current conditions and challenges involved in container trading. The process must also involve consultations with Council internal and external stakeholders.

A survey needs to be conducted in all or most of the informal trade management areas of the Council; the Urban Residential (Townships) and Rural areas.

#### **3.1 Internal Stakeholders**

Consultations will be held with Council internal stakeholders that are affected by the placement of the identified trading structures. Internal stakeholder input establishes a baseline of information against which to measure performance and effectiveness of the final policy. These consultations will provide stakeholders with an opportunity to identify the implications of policy options in terms of their service configuration, identify the scope and impact of issues.

The Council stakeholders to be further consulted are:

- (a) Development Planning
- (b) Business Licensing
- (c) Land Use Management
- (d) Transport Authority/Traffic
- (e) Parks

- (f) Environmental Health
- (g) Spatial Planning
- (h) Solid Waste Management
- (i) Real Estate

### 3.2 External Stakeholders

External stakeholders to be consulted will include Informal Trade Associations, Container Retailers and any other Companies that use containers to sell or promote their products within the City. The external stakeholders will be consulted to create awareness of the policy and to establish the dynamics involved in the container trading sector to inform and test the feasibility of options.

## 4. Status Quo

### 4.1 What is happening?

Traders in the identified structures/containers operate without permits. This situation is created by the lack of strategy by Council to incorporate resident traders in the current permit approval system. This has caused people to set up trading structures illegally in their fight against unemployment and poverty.

Some traders rent the trading structures from private individuals and they pay only for the trading structures. Some traders have arrangements with private companies to use the containers to trade specific products.

Traders are situated in road verges close to taxi ranks, schools, police stations, clinics, hospitals and next to formal businesses and other at intersections and robots. The placement of trading structure and trading area is influenced by the type of goods and services to be sold and the location of the customers.

Goods and Services provided by container traders include:

- Fast Foods
- Spaza Shops
- Hair Salons
- Community Phones
- Fresh Produce
- Sewing
- Internet Café
- Shoe repairs
- Cosmetics Retail
- Liquor selling
- Car Wash

The goods sold and services provided by container traders vary and have moved into sectors that have predominantly been associated with the formal sector. The internet café, hair salons and cosmetics shops indicate that the informal traders are tapping into new trading markets. This could mean that the street informal traders are supplying both the low and middle income earners.



However, this transition into other areas or sectors of business is still at an early stage as most traders still provide the same products in the same area which leads to high unsustainable competition.

## **4.2 Challenges**

Container traders do not have proper access to water, sanitation and waste disposal bins and bags. In certain circumstance they use neighbouring houses, factories and taxi ranks facilities.

Container traders lack information and are not aware that trading in any informal structures requires written permission from Council.

Structures used for selling fresh produce and fast foods are unhygienic and not properly cleaned. Most of the trading structures are in poor conditions externally and internally with roof leaks and poor ventilation.

Telecommunication and other companies provide traders with branded containers as part of their community service. The containers provide shelter for the customers when they use the phone service and for others the containers are used as trading areas and/or workshops (i.e tyre service). Other companies do the same and the branding of these containers is not done according to Council requirements for signs on buildings and structures.

Traders have created foundations in the form of concrete slabs and other material to secure the areas they work in. This is done both on private and Council land; some of these foundations have not been approved. Foundations in public places are problematic as they possibly could block access to electricity and telephone cables as well as water pipes.

The Business Regulation & Governance Unit has to encourage and ensure that current and future container traders are registered as they currently operate illegally without permits and in prohibited areas.

## **5. Policy Strategic Direction**

### **5.1 Policy Context**

Council should promote and develop the informal economy through:

- (a) The provision and development of sites and markets for trading
- (b) The provision of facilities and infrastructure: and
- (c) The supply of supporting services

The Container policy is developed in this context of promoting and developing the container traders. The policy does not seek to stop container trading but provides mechanisms and tools for managing it. The Council's Business Regulation and Governance Unit shall be responsible for controlling and maintaining the placement of trading structures and proper management of container trading.



There are number of tools for managing informal traders and these tools include:

- (a) The registration of traders
- (b) The allocation of sites
- (c) Proper rentals management
- (d) Compliance to Bylaws and Regulations

The legislative framework for the policy is within the context of the Business Act 71 of 1991, the Mpumalanga Business Act and the Mbombela Street Trading Bylaw. The policy is also linked to other bylaws of the Council as applicable to each department and impacting on container trading.

## **5.2 Objectives**

- To ensure proper management of permits and rentals
- To encourage the continued leasing of land to container traders
- To promote the regulation of the sector
- To encourage compliance to rules and regulations for informal trade

## **6. Authority to trade**

Container trading operates in the informal sector, however the usage of structures such as containers for trade renders it informal trade with formal structures. The formal classification of structures allows for better control by the Council of the trading structures in terms of identifying areas of trade which could be incorporated into town planning schemes as these structures though not permanent have an implied permanent status. Development of the Informal Economy requires/encourage that street traders (informal traders) have to graduate from informal to formal businesses. Trading in containers, Wendy house and caravans or any other formal structure is considered to be the last step before graduating to the formal sector.

The trading structures are classified as formal to ensure that Council departments including environmental health, development planning can regulate and monitor the placement and management of container trading structures.

Any person who trades in a public road or public place and wants to erect a formal structure for purposes of trade must have written permission from Council approving the type of structure to be used, goods and services to be traded. No trader can set up a trading structure without getting permission from Council with the exception of the traders who have been trading on public roads and places without Council permission before the adoption of this policy. The exempted traders must apply for written permission from Council no later than two (2) months after the adoption of this policy. If these traders continue to trade without permission from Council they shall be subject to Council approved sanctions.

Traders who want to trade using formal trading structures on public roads and public places should apply for permission at the Business Regulation & Governance Unit.

The applicant should provide the unit with an application letter describing the area they want to trade in, the type of goods to be sold and services to be provided. The application letter must also indicate the type of trading structure to be used, the general condition of the structure.

The Business Regulation & Governance Unit will process the application in consultation with other Council departments including Land Use Management, Environmental Health, Properties, Spatial Planning and Traffic Department. The Business Licensing Department should be consulted after the Business Regulation & Governance has approved the lease application prior to informing the applicant. This will ensure that all trading activities conducted on Council land are properly registered and licensed. The Business Regulation and Governance Unit shall be the only department that receives all applications for container trading and communicates with informal traders with regards to container trading.

The Traffic, Parks and Solid Waste departments should provide the Business & Regulation Unit with their requirements and regulations that should be considered when allocating sites. The Business Regulation & Governance shall receive consent from all relevant departments before officially/formally allocate the site.

Traders who continue to trade and those who want to engage in container trading without permits after the adoption of the policy shall be subject to removal after a notice period of 30 days. If these removed traders want to apply for permits they would have to undergo the process of proper allocation by Council before placing trading structures.

Permission to trade shall be in the form of a short term tenancy lease agreement which shall state the terms and conditions for container trading. The short term tenancy agreement is recommend because there is a one month termination notice as security of tenure is not permitted in public spaces.

## **7. Trading zone**

Container trading is informal with formal structures, is a form street trading which can be carried out on verges of public roads and in public places. Traders should have written permission from Council to trade, in a public road or public space from structures. Trading structures requiring Council permission are Caravans, Containers, Trailers, Wendy Houses and any other formal roofed structure. It is imperative that the allocation of sites for these traders be not limited to the Rental & Allocations Policy as it does not account for all aspects pertaining to the placement of trading structures. Council shall establish a system for identifying and demarcating trading sites.

Council will be responsible for identifying and allocating trading areas / sites for container traders to ensure that all trading sites meet the policy requirements. Container trading is permitted only in Council identified sites.

Should any site be identified by a trader other than the already approved sites, the Business Regulation & Governance shall consult and receive consent from all relevant departments before officially/formally allocate that site

### **7.1 Location of trading structure**

(a) Trading structures should not obstruct or block:



- pedestrians in sidewalks
- vehicular traffic
- pedestrian crossings
- parking / loading bays
- facilities for vehicular and pedestrian traffic
- road traffic signs
- access to street furniture
- building entrances and exits
- a fire hydrant;
- displayed goods in shops from view

(b) Trading structures should not be used for sleeping overnight at the place of business.

(c) The structures should not be on a verge next a formal business that sells the same goods without consent of that business owner.

(d) Trading structures shall not be placed for purposes of trading in a public garden or park.

(e) These requirements are applicable to the placement or setting up of all the trading structures unless when exempted by Council.

## **7.2 Trading sites**

### **7.2.1 CBD**

Container trading is restricted, it shall only be allowed and exempted by Council due to the demand and need for the goods and services; the suitability of the trading structure and/ or any other valid concern.

### **7.2.2 Taxi Ranks**

Container trading is permitted in designated areas inside or next to taxi ranks. The approval of trading sites should be done in consultation with the Transport Authority. Taxi ranks in the CBD areas should be treated as restricted areas that require Council exemption.

### **7.2.3 Residential Town Areas**

Container trading is permitted in designated areas and should be in line with the requirements for issuing sites.



#### **7.2.4 Residential property**

Town planning schemes approve the placement of trading structures on residential property as a Special Consent. Approval for these structures should be linked with Business Regulation & Governance process of issuing permits to informal traders. This will ensure that one department is primarily responsible for all informal trading activities.

#### **7.2.5 Rural Areas**

Container trading is permitted in identified sites and should be in line with the requirements for site allocation.

### **8. Trading Structures**

#### **8.1 Containers**

Size: 6mx2m

Containers can be modified to suit the specific needs of a trader.

#### **General Requirements**

- Containers should have proper ventilation systems with windows.
- Traders should not create foundations with any material for placing container without Council approval. This is applicable to residential and council land.
- Containers should be properly maintained and have no holes on the roofs and floors.
- Containers should have no internal and external rust.
- Container must be painted in one colour, (Common within the City can be agreed upon by all affected stakeholders)

#### **8.1.1 Container Traders Selling Food**

##### **Requirements**

- Traders should at all times follow acceptable hygiene practices, i.e. they should be free of open wounds and infectious diseases, have no sores, wear a clean apron, protective head gear and use sanitised tongs and utensils to handle food.
- In containers that use electric stoves, a two-plated stove is permitted, primus and gas stoves are not permitted.
- Containers should have a deep bowl sink for hand-washing that is drained to the sewer or to the satisfaction of the Environment Health Practitioner. These could be installed as a modification that the container-selling containers provide.
- There should be suitable storage facilities.

- Container tops must be impervious and resistant to fire, they should not hold water.
- Walls and floors should be made of easy to clean material.
- Traders must meet all Environmental Health requirements.

### **8.1.2 Container Community Phones Trading**

#### **Requirements**

- Telecommunication companies must ensure legal placement of containers on Council land. This applies to the companies that own the containers and contract the traders to operate.
- In cases where the trader owns the container, the trader is responsible for obtaining permission from Council.
- Branding of the container should be aligned to the signage requirements described in this policy.

### **8.2 Wendy Houses**

Wendy Houses are made of timber and corrugated iron.

Size: 2.4m x 2.4m

#### **Requirements**

- Timber Wendy houses cannot be used to sell food that has to be cooked with gas and primus stoves as timber is a flammable material.
- Fresh produce in the form of fruits and vegetables can be sold and stored in timber Wendy houses because they are well ventilated.

### **8.3 Marquees**

Marquees are ventilated and can be used to conduct the fresh produce business.

Size: 5m x 10m (One Pole)

#### **Requirements**

- A fresh produce seller should have a rodent proof storage facility to store the fruits and vegetables overnight.
- Food traders must keep marquees clean and free of germ-transmitting pests.
- Traders should not create foundations and floors without Council approval.

## **8.4 Caravans**

Mobile and Immobile caravans should meet the set requirements for trading.  
Size: 5m x 2m

### **8.4.1 Caravans Selling Food**

#### **Requirements**

- Caravans should be kept clean and the person conducting the business should at all times be hygienic, i.e. they should not have sores, open wounds, infectious diseases. Traders should wear clean aprons, protective head gear and use sanitised tongs and utensils to handle food.
- Caravans that use electric stoves a two-plated stove is permitted, primus and gas stoves are not permitted.
- Caravans should have a deep bowl sink for hand-washing that is drained to the sewer or to the satisfaction of the Environment Health Practitioner.
- There should be suitable storage facilities
- Caravan tops should be impervious and resistant to fire, they should not hold water.
- Walls and floors should be made of easy to clean material.
- Traders must meet all Environmental Health requirements.

## **9. Access to Council Services**

The Business Regulation & Governance Unit will facilitate the provision of access to Council services in the demarcated areas. Traders are responsible for ensuring connection and payment for services such as electricity, water and waste. Service payments except for waste removal shall be made separate from the rent payments and shall be made directly to the service providers. Traders need to have a trading permit from the Business Regulation & Governance Unit before applying for electricity and water services.

### **9.1 Water**

- Traders should have access to water taps either on site or in nearby sites.
- Container parks should have water taps on site.
- Proper drainage systems should be available on site or in nearby site.
- Traders who do not have access to water taps should have a 25 litre bucket/container of water on site.
- Traders must pay for water usage according to the Water and Sanitation department's requirements.



## 9.2 Ablution Facilities

- Ablution facilities should be available on site or nearby site.
- Ablution facilities should be in a maximum distance of 50m from traders.
- Ablution facilities could be mobile or permanent structures which should be kept cleaned and hygienic at all times.
- Traders should take a responsibility of ensuring that there is access to any ablution facilities around where the container will be located. The access to such facilities should be a pre-requisite for the authorisation to trade.

## 9.3 Waste

- Traders are responsible for collecting and disposing of litter generated by customers and employees.
- Traders are responsible for putting litter in the provided litterbags for collection by Council.
- Traders should take out the waste on waste removal dates, the trader/s should be aware of the collection dates.
- Traders must pay Council for the waste removal service. This payment should be incorporated into monthly rentals.

## 10. Signage on Trading Structures

Advertising on trading structures in rural and urban areas shall meet the following criteria:

- Advertising is limited to the name of the business, nature of the business as well as goods and services provided.
- The use of containers for third party or remote advertising is not permitted on trading sites and/or structures.
- Permanent ground signs are not permitted.
- Advertising on any one side of the trading structure shall not exceed 1.5m<sup>2</sup>.
- Product advertising shall be limited to 30% of the structure's sign.
- A single movable/portable board not exceeding 0.600 X 0.900mm is permitted on the trading site.
- Advertising that does not comply with the above will be removed without notice and costs incurred during the removal process will be covered by the trader concerned.

## **11. Goods and Services**

The City of Mbombela encourages and supports a diverse mix of markets and trading opportunities. Informal traders are treated as small business owners and cannot be limited in terms of the type of services they can provide. Goods and services that are legal, non-hazardous, comply to the Health requirements and meet all licensing requirements can be sold and/or provided in the trading structures.

Services that require licensing include selling liquor, milk, food and perishables. Traders should consult with District Health and City Licensing to ensure that goods and services meet environmental health and licensing requirements. The processing of applications for food traders shall be done in conjunction with environmental health to ensure that traders have the required Certificate of Acceptability before approval.

Traders can provide similar products in a trading site but should be in line with the principles of fair competition and sustainable business development. Competition in container parks should be controlled to enable sustainable management of the traders businesses. The number of traders providing the same service in a container park or trading site can be limited to a maximum of three (3) traders; the number of traders will be influenced by the demand and supply of the product/s. This restriction applies to traders who trade from one trading plot and service the same customer base. These restrictions allow for sustainable profit gains, business growth and the creation of new opportunities in a well-managed environment.

Street traders in the CBD need storage facilities that are accessible and safe. Container storage facilities for the street traders can be allowed in designated areas and they should be well-managed. Container trading services in the CBD is subject to trading requirements and any other requirement as determined by Council. The additional requirements could be influenced by the aesthetics of the area, maintenance and cleaning of the CBD.

## **12. Container Parks**

There are no container parks currently operating as trading sites for informal traders. The policy encourages the establishment of container parks in urban and rural areas.

- Traders should be encouraged to operate in container parks as they will secure growth prospects and access to Council facilities.
- Container parks should be on sites that are easily accessible to both customers and traders.
- The parks must have a management committee that is responsible for the management of the park.
- The members of the management committee must be tenant traders.
- The management committee should establish rules and regulations for operating the park including competition restrictions.
- The management committee must ensure that the park has security in the form of a guard/s.

### **13. Monitoring and evaluation**

The Business Regulation & Governance Unit should ensure constant monitoring of informal trading activities as a tool for improved management. Container trading activities have to be constantly monitored to ensure that traders do not provide illegal goods or services and ensure that they are not contravening trading requirements.

If a container trader or employee of the trader is found to be in breach of the terms and conditions of the lease agreement and trading requirements, the trader shall be issued with a written warning and must rectify the problem within 14 days. If the trader does not rectify the problem after 14 days, Council shall terminate the lease agreement and order the removal of the trading structure from the site. If the trader does not remove the structure within 14 days, Council shall remove it and the trader shall be responsible for the costs of removal and storage of the trading structure.

Traders who create structural changes and put up foundations on the leased land that make the trading structures permanent shall be ordered to remove these structural changes within 14 days. If the trader fails to remove the structural changes after 14 days, Council shall terminate the agreement and remove the trading structure with its changes. The trader shall be responsible for the costs of removing the structure.

Complaints from the community and other businesses (formal and informal) shall be investigated and if the trader is found to be guilty of failing to comply with the Street Trading By-law and policy restrictions s/he shall be penalised. The penalty shall be in a form of a fine.



## **ANNEXURE 1 – STREET TRADING BYLAW**

### **MBOMBELA LOCAL MUNICIPALITY: STREET TRADING BY-LAW**

In terms of and under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, read with sec 12;13; 21; 21A – B of the Municipal Systems Act 2000 (Act 32 of 2000) and the Mbombela Municipality enacts as follows:-

1. Definitions

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## **SCHEDULE 1: Confiscated Goods Register Information**

### **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; and the Mpumalanga Business Act, 1996 (Act No.2 of 1996);

**“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 Mbombela Municipality, and includes any political structure, political office bearer, councillor, 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, councillor, agent or employee; or
- (b) 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);

**"Road Traffic Regulations"** means the 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);

**"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 economic 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 Mbombela 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**

(1) No person may conduct the business of a street trader without the written permission of the municipality.

(2) The municipality may impose conditions when issuing a street trading permit and the municipality may indicate the area and time for which the permit is valid.

- (3) The municipality may suspend the validity of a street trading permit in a specific area or of street trading permits in general when a special event takes place, provided that the municipality shall post written notices to this effect on its notice boards and provided further that, where possible, written notices shall be served on individual street traders in the affected areas.
- (4) The municipality may refuse to renew a permit if there are any fines outstanding.
- (5) Permits issued in terms of this by-law must at all times be kept on the person of the street trader to whom it had been issued.
- (6) Any permit issued in terms of this by-law must be produced to an official who calls for it.
- (7) This by-law applies to all persons who carry on the business of street trading within the area of jurisdiction of the Mbombela Municipality.
- (8) A person who contravenes any provision of this section commits an offence.

## **CHAPTER 1: GENERAL PROVISIONS APPLICABLE TO STREET TRADING**

### **4. Declaration of restricted street trading areas**

- (1) The Council may declare any area in which trading is restricted.
- (2) No person may trade in a restricted area:-
  - (a) unless such person is in possession of:-
    - (i) a valid permit in terms of which a bay in a street has been allocated, or
    - (ii) a lease agreement with the Council or similar authority issued by the Council in respect of municipal land, or
  - (b) in contravention of the conditions of a permit.
- (3) A person who contravenes a provision of this section commits an offence.

### **5. Procedure for declaring a restricted area**

- (1) Whenever the Municipality has reason to believe that the number of traders in a specific area have assumed, or have the potential to assume, such proportions that the need



has arisen or may arise that trading in such area should be restricted, the Municipality may cause an investigation to be launched into the feasibility of such restriction.

(2) An investigation into the feasibility of restricting trading, shall address the following:-

- (a) whether the number of traders and in the area have, or may have the potential to negatively affect -
  - (i) the established businesses, residences, tourist potential and accessibility of shoppers to the area;
  - (ii) the movement of traffic and/or pedestrians in the area, and
  - (iii) present or future planning and development of the area,
- (b) whether more effective supervision or control of the area, will make a declaration unnecessary;
- (c) whether the intended restriction will drive out of business a substantial number of traders;
- (d) the various options open to the Municipality, whether or not such an area is declared restricted;
- (e) the preparation of a plan showing:-
  - (i) the position of the area concerned;
  - (ii) if restricted, the number of traders to be allowed in such area, and
  - (iii) locations where traders may be allowed, and
  - (iv) if restricted, the criteria to be used for the allocation of bays;
- (f) whether any traders belong to associations, and, if so, the names, membership and area of influence of such associations;
- (g) any other information which may have an influence in the consideration of the declaration of such area,
- (h) the views of the association/s concerned.

(3) If the Municipality, after considering the findings of the investigation, finds a need to restrict the area, it shall instruct the municipal manager to enter into a process of public participation and advise the Municipality of the outcome thereof.

- (4) The Municipality shall consider the representations of the association/s concerned, as well as every objection submitted to the municipal manager and the comments of the municipal manager thereon, and will thereafter resolve on the declaration of the area concerned, as well as the criteria in terms of which permits for bays will be considered.
- (5) The declaration must be published in the Provincial Gazette and shall take effect on the date of such publication.
- (6) Copies of the notice of declaration referred to in sub-section (5), must be posted at selected municipal offices.

## **6. 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;
  - (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;
- (e) at a place where street trading obscures -
- (i) a road traffic sign that is displayed in terms of the National Road Traffic Act, 1996;
  - (ii) or impedes the view of any road user; or
  - (iii) a marking, notice or sign displayed or made in terms of this by-law;
- (f) 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;
- (g) 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;
- (h) within ten meters (10m) of the entrance to a financial institution or electronic banking facility; or
- (i) where it leaves less than 2 metres of width of a sidewalk clear for pedestrian use.
- (3) A person to whom an area or stand has been let or allocated under paragraph (c) of section 6A (3) of the Act<sup>1</sup> –
- (a) must comply with the conditions of the lease of allocation;

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<sup>1</sup> These include instances where the municipality:

- (a) leases any verge to the owner or occupier of the contiguous land on the condition that such owner or occupier shall admit a specified number of street vendors, pedlars or hawkers in stands or places on such verge designated by such owner or occupier; or
- (b) set apart by resolution and demarcated stands or areas for the purposes of the carrying on of the business of street vendor, pedlar or hawker on any public road the ownership or management of which is vested in the local authority; and
- (c) by agreement let or otherwise allocate any stand or area.



- (b) must be in possession of written proof that the municipality has let or allocated the area or stand to him or her; and
  - (c) may not transfer any written permission that municipality has let or allocated the area or stand to him or her to any third party.
- (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) Any person who contravenes a provision of this section commits an offence.

## **7. 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 m<sup>2</sup> 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 or the boundary of a residential erf (contiguous to which he or she conducts his or her business) and himself or herself; and
    - (iii) leave a space of not less than 2 metres from the kerb of the roadway.

- (2) A person who contravenes a provision of subsection (1) commits an offence.

**8. 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, provided that prior written approval to erect a structure must be obtained from the municipality and the municipality may prescribe the materials that may be used;
  - (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;
  - (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;
  - (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;
  - (r) may not trade from door-to-door in any business centre as indicated in the municipality's zoning scheme; and
  - (s) may not cause a nuisance by insisting, begging or intimidating any person to purchase goods.
- (2) A person who contravenes a provision of subsection (1) commits an offence.



## **9. Removal and impoundment**

(1) An official may remove and impound any goods that a trader failed or refused to remove from a place after having been requested to do so by the authorised official, or which had been left there or abandoned-

- (a) which the authorised official reasonably suspects are used in connection with street trading; or
- (b) which is found at a place where the business of street trading is restricted in terms of this by-law and which is likely to constitute a contravention of any provision of this by-law.

(2) An official acting in terms of subsection (1) must-

- (a) except in the case of goods that have been left or abandoned, issue to a trader a receipt for any goods so removed and impounded,
- (b) without delay deliver such goods to a place determined by the municipality.

(3) The owner of goods removed and impounded in terms of subsection (1) shall, subject to the provisions of section 11, be liable for any expenses incurred by the municipality and the municipality may keep such goods until all such expenses have been paid or deal with the goods as contemplated in section 11.

(4) A certificate issued under the hand of the municipal manager shall be deemed to be proof of any expenses incurred by the municipality.

(5) 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.

## **10. Confiscated goods register**

The Municipality must –

- (a) maintain a register containing the information contemplated in Schedule 1, which must be available for public inspection at all reasonable times; and
- (b) complete the confiscated goods register immediately upon the acceptance into the place of safekeeping and storage set aside for this purpose.

## **11. Disposal of impounded goods**

(1) Any perishable goods impounded in terms of section 9(1) may at any time be sold, destroyed or otherwise disposed of in terms of any policy of the municipality within a

reasonable time after its impoundment by the municipal manager, and the proceeds of a sale, less any expenses incurred by the municipal manager, shall, upon presentation of the receipt contemplated by section 9(2), be paid to the owner; provided that if such proceeds are not claimed within three months of the date on which the goods concerned were sold, the proceeds shall be forfeited to the municipality.

(2) The owner of goods impounded in terms of section 9(1), may, in the case where the goods were not destroyed or sold in terms of subsection (1), on production of the receipt contemplated by section 9(2), reclaim the goods; provided that if the goods remain unclaimed after three months, the municipal manager shall have the right to sell the goods and the proceeds shall be forfeited to the municipality.

(3) When goods are reclaimed in terms of subsection (2), any outstanding expenses incurred by the municipality in connection with the removal and impoundment, must first be paid before the goods may be returned.

(4) In the event of the proceeds of any sale of goods contemplated by this by-law not being sufficient to defray the expenses incurred by the municipality, the owner of such goods will remain liable for so much of such expenses as is not defrayed by the proceeds from the sale of such goods.

## **12. Sale of impounded goods**

(1) If the owner of impounded goods, excluding perishable foodstuffs, fails to claim such goods and pay the prescribed fees as determined by the municipality from time to time within 3 months of the impoundment of the goods, the municipality must –

(a) Apply to the Court for authority to sell the goods; and

(b) In the application contemplated in paragraph (a), provide the Court with proof that a statement as contemplated in sub-section (2) was lodged with the owner.

(2) The statement contemplated in subsection (1) (b) must include the fees and costs due in terms of this by-law.

(3) The Court, whether the amounts set forth in the statement contemplated in subsection (1) (b) are disputed or not, must –

(a) Summarily enquire into the matter;

(b) Enquire whether notice was given to the owner of the goods by the municipality; and

(c) Make such order as it considers just and equitable, including an order –

(i) As to costs; and

(ii) On the process to be followed by the municipality in the sale of the confiscated goods.

**13. Municipal employees and councillors may not purchase impounded goods**

Employees and councillors of the municipality, or a family member, or a close associate of any municipal employee or councillor, may not purchase any goods offered for sale in terms of this by-law, either personally or through any other person, directly or indirectly.

**14. 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**

**15. Penalty**

A person who has committed an offence in terms of this by-law is, on conviction, and subject to penalties prescribed in any other law, liable to a fine as approved by the local magistrate, or in default of payment imprisonment not exceeding 3 months.

**16. 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 him- 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.

#### **17. Indemnity**

The municipality will not be liable for any loss or damage suffered arising from the impoundment of any goods in terms of this by-law.

#### **18. 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.

#### **19. 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 or 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.

## **20. 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 this by-law.

## **21. Short title and commencement**

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

### **SCHEDULE 1**

#### **Confiscated Goods Register Information**

*(Section 10)*

A confiscated goods register must, at least, contain the following information –

1. Place where goods are kept
2. Date of receipt of goods
3. Number and description of goods
4. Name and address of person who seized the goods
5. Name and address of owner of goods
6. Name and address or description of place where goods were found
7. Distance between place where animal was seized and pound
8. Date of sale of goods
9. Proceeds of sale of goods
10. Name and address of purchaser
11. Excess amount (if any) paid to owner or municipality
12. Receipt number