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DRAFT STREET TRADING BY - LAWS

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INTERPRETATION

1. In these bylaws, unless the context otherwise indicates -
 - (I) "authorized official" means an official of the Council authorized to implement the provisions of these bylaws;
 - ii) "Council" means the City/Town Council of BARBERTON
 - ~~✱~~(iii) "garden or park" means a garden or park to which the public has a right of access;
 - ~~✱~~(iv) "goods" include a living thing or any transferable interest;
 - ~~✱~~(v) "litter" includes any container or other matter which has been discarded, abandoned or left behind by a person - trading or by his customers;
 - (vi) "national monument" means a building declared to be a national monument under the National Monuments Act, 1969 (Act No. 28 of 1969);
 - ~~✱~~(vii) "prohibited area" means any place declared or to be declared under section 7(2) of the Act by resolution of the Council to be an area in which street trading may be prohibited;
 - (viii) "property", in relation to a person earning on the business of street trading, means any article, receptacle, vehicle or structure used or intended to be used in connection with such business and include goods in which he trades;
 - (ix) "public building" means a building occupied mainly by the state or the Council;

- (x) "Public place" means a public place as defined in section 2 of the Local Government Ordinance, 1939 (Ordinance 17 of 1939);
- (xi) "public road" means a public road as defined in section 1 of the Road Traffic Act 1989 (Act No. 29 of 1989)
- (xii) "restricted area" means any place declared under section 7(2) of the Act by resolution of the council to be an area in which street trading may be restricted;
- (xiii) "roadway" means a public road excluding the sidewalk;
- (xiv) "sell" Includes supply to and also -
 - (a) exchange or hire;
 - (b) store, expose, offer or prepare for sale;
and 'sale' has a corresponding meaning;
- (xv) "services" include any advantage or gain for consideration or reward;
- (xvi) 'sidewalk' means a sidewalk as defined In Section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989.
- (xvii) "the Act" means the Mpumalanga Businesses Act, 1996;
- (xviii) "trade" means to sell goods or services in a public road or public place and "trading" and "street trading" has a corresponding meaning,
- (ix) "verge" means a verge as defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989) and any word or expression to which a meaning has been assigned in the Mpumalanga Business Act 1996

For the purposes of these bylaws, words as defined In section 1 of the Act shall have a corresponding meaning where used in these by-laws.

FREEDOM TO TRADE

2. Subject to the provisions of section 3 and 4 and any other law, street trading is freely permitted except in so far as such trading is restricted or prohibited by sections 5 to 12 inclusive and sections 14 and 15.

GENERAL CONDUCT

3. A person shall -
 - (a) not place his property on a verge or public place except for the purpose of trading;
 - (b) ensure that his property does not cover an area of a public road or public place which is greater in extent than three meter long and two meter wide and if such person is a vendor of newspapers and/or magazines, he or she shall place such newspapers and/or magazines in an orderly pile neatly stacked.
 - (c) not place or stack his property in such a manner that it constitutes a danger to any person or is likely to injure any person;
 - (d) not obstruct access to a fire hydrant;
 - (e) on concluding business for the day, remove his property to a place which is not part of a public road or public place;
 - (f) not display his goods or other property on a building or other private property, without the consent of the owner, occupier or person in control of such building or property;

- (g) on request by an employee or agent of the council or any supplier of telecommunication or electricity or other services, move his property as to permit the carrying out of any work in relation to any such service or to a public road or public place;
- (h) not attach any object by any means to any building, structure, pavement, tree, parking meter, lamp post, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public place;
- (i) not make a fire at a place or in circumstances where it could harm any person or damage a building or vehicle or any street furniture referred to in paragraph (h);
- (j) not store or place his property in a manhole or stormwater drain and
- (k) not display or allow to display any goods or property or trade in an area which is exclusively established for the parking of vehicles.

CLEANLINESS

4. A person trading shall -
- (a) keep the area or site occupied by him for the purpose of such business in a clean and sanitary condition at all times.
 - (b) keep his property in a clean and sanitary condition;
 - (c) properly dispose of litter degenerated by his business;
 - (d) not dispose of litter in a manhole, stormwater drain or other place not intended for the disposal of litter;

- (e) ensure that on completion of business for the day the area or site occupied by him for the purpose of trade is free of litter;
- (f) In the case of a vendor of foodstuffs, take such precautions as may be necessary to prevent the spilling onto a public road or public place of any fat, oil or grease in the course of conducting his business and to prevent any smoke, fumes or odours emanating from his activities from becoming a nuisance, and
- (g) on request by an employee or agent of the Council move his 'property' so as to permit the cleansing of the surface of the area or site where he is trading.

OBSTRUCTION OF PEDESTRIANS

5. No person shall trade at a place where -
- (a) It obstructs access to street furniture such as a bus passenger bench or shelter or queuing line, refuse disposal bin or other-facility intended for the use of the general public;
 - (b) It obstructs the visibility of a display window in business premises, if the person carrying on business in the premises concerned objects thereto;
 - (c) it obstructs access to an entrance to or exit from a building or automatic bank teller machine;
 - (d) it obstructs access to a pedestrian crossing;
 - (e) it obstructs access to any vehicle;
 - (f) It leaves less than two meters in width of a sidewalk clear for pedestrian use, or

- (g) it in any other manner substantially obstructs pedestrians in their use of a sidewalk.

OBSTRUCTION OF VEHICULAR TRAFFIC

No person shall trade at a place where -

- (a) It causes an obstruction on a roadway;
- (b) It limits access to parking or loading bays or other facilities for vehicular traffic;
- (c) It obscures any road traffic sign or any marking, notice or sign displayed or made in terms of these or any other by-laws, or
- (d) It interferes in any way with any vehicle that may be parked alongside such place.

TRADING RESTRICTED TO SPECIFIED HOURS IN CERTAIN PLACES

7. No person shall trade -

- (a) on a verge contiguous to any place of worship, national monument or public building, or
- (b) in a restricted area, which is specified in Schedule A,
- (c) outside the hours so specified in relation to each such garden park, verge or area.

TRADING RESTRICTED TO SPECIFIED GOODS OR SERVICES IN CERTAIN PLACES

No person shall trade -

- (a) on a verge contiguous to any place of worship, national monument or public building, or
- (b) in a restricted area, which specified in Schedule B,
other than in the goods or services so specified in relation to each such garden or park, verge and area.

TRADING RESTRICTED TO DEMARCATED STANDS OR AREAS IN CERTAIN PLACES

No person shall trade -

- (a) on a verge contiguous to any place of worship, national monument or public building, or
- (b) In a restricted area, which is specified in Schedule C,
outside a stand or area set apart for trading purposes as contemplated in Section 6A(3)(b) of the Act.

NO TRADING IN STANDS OR AREAS WHICH HAVE BEEN LET EXCEPT BY THE LESSEE

- 10 If the Council has let or otherwise allocated any stand or area set apart or otherwise established for street trading purposes, as contemplated in Section 7(3)(c) of the Act, no person may trade on such or in such area if he is not in possession of proof that he has hired such stand or area from the Council or that it has otherwise been allocated to him.

NO TRADING NEAR CERTAIN PUBLIC BUILDINGS. PLACES OF WORSHIP AND NATIONAL MONUMENTS

11. No person shall trade on a verge contiguous to any place of worship, national monument or public building which is specified in Schedule D.

NO TRADING IN PROHIBITED AREAS

12. No person shall trade in any prohibited area.

SIGNS INDICATING RESTRICTIONS AND AREAS

The Council shall -

- (a) by resolution prescribe signs, markings or other devices indicating:
 - i) specified hours, places, goods or services in respect of which street trading is restricted;
 - ii) the location or boundaries of a restricted area;
 - iii) the boundaries of a stand or area set apart from the purpose of the carrying on of the business of street trading under Section 6A(3)(b) of the Act;
 - iv) the fact that any such stand or area has been let or otherwise allocated;
 - (v) any restrictions or prohibition against trading in terms of these by-law and
 - (vi) the location of boundaries of a prohibited area, and display any such sign, marking or device in such a position and manner as will indicate the restrictions or the location or boundaries of the area or stand concerned.

TRADING NEAR RESIDENTIAL BUILDINGS

No person shall, outside an area specified in Schedule E trade in that half of a public road contiguous to a building used for residential purposes if -

- (a) the owner, person in control or occupier of any part of the building facing onto such road has objected thereto, and
- (b) the fact that such objection was made has been made known to the first mentioned person by an authorized official

TRADING NEAR CERTAIN BUSINESS PREMISES

No person shall trade on a verge contiguous to that part of a building in which business is being carried on by a person other than a department store or supermarket or other large supplier of many different lines of goods and who as one of his principal lines sells goods of the same nature as or of a similar nature to goods being sold by the first-mentioned person, without the consent of the second-mentioned person.

REMOVAL AND IMPOUNDMENT

- 16.(1) An authorized officer may remove and impound any goods, articles, receptacles, vehicles or structures which he reasonably suspects is being used or intended to be used or has been used in or in connection with street trading which he finds at a place where street trading is rested or prohibited in terms of Section 3 to 12 inclusive and which in his opinion, constitutes an infringement of any such section.

- (2) The disposal of any goods, articles, receptacles, vehicles or structures removed and impounded as contemplated in subsection (1) and the liability of any person for the expenses incurred in connection with such removal, impoundment and disposal, shall be in accordance with the regulations prescribed by the Administrator under section 7(4) of the Act

OFFENCES

17. Any person who contravenes a provision of these by-laws shall be guilty of an offence.

PRESUMPTIONS

- 18 (1) In any prosecution for an offence under these by-laws, an allegation in the charge concerned that -

- (a) any goods with which a business was carried on were or were not of a particular kind, class, type or description;
- (b) any goods were sold or offered for sale;
- (c) any place was situated in a public road or public place or within a particular area;
- (d) any person carried on the business of street trading and in a manner and place alleged;

shall be presumed to be correct unless the contrary is proved.

- (2) In any criminal manner proceedings for a contravention of these by-laws, where it is shown that -
- (a) any goods were displayed in a public road or public place, such goods shall be presumed to have been offered for sale;

19. Any property used in the provision of any service was available in a public road or public place, such services shall be deemed to have been offered for supply.

PENALTIES

Any person who is guilty of an offence in terms of these by-laws shall on conviction be liable for a fine, or to imprisonment for a period not exceeding three months.

VICARIOUS RESPONSIBILITY OF PERSONS CARRYING ON BUSINESS

20. When an employee of a person conducting the business of street trading does or omits to do any act which would be an offence in terms of these by-laws for that person to do or omit to do, that person shall be deemed himself to have done or omitted to do the act, unless he satisfies the court that-
- (a) he neither connived at nor permitted the act or omission by the employee concerned;
 - (b) he took all reasonable steps to prevent the act or omission, and
 - (c) an act or omission, whether lawful or unlawful of the nature charged on no condition or under no circumstances fell within the scope of the authority or employment of the employee concerned and the fact that the said person issued instructions whereby an act or omission of that nature is prohibited, shall not in itself be sufficient proof that he took all reasonable steps to prevent the act or omission.

VICARIOUS RESPONSIBILITY OF EMPLOYEES

21. When a person carrying on the business of street trading is by virtue of Section 20 liable for an act or omission by an employee of that person, that employee shall also be liable as if he were the person carrying on the business concerned.

NAME OF BY-LAWS

22. These by-laws shall be known as the Street Trading by-laws.

SCHEDULE A

Places with restricted trading hours

PLACES

TRADING HOURS

- A. Gardens and parks:

- B. Verges contiguous to the following - places of worship, national monuments and public buildings:

- C. Restricted areas:
(with number and date of notice of declaration thereof)

With regard to A, B and C above, the hours determined by Council after receiving specific applications.

SCHEDULE B

Places where goods or services are restricted

PLACES

PERMITTED GOODS OR SERVICES

- A. Gardens and parks:

- B. Verges contiguous to the following places of worship, national monuments and public buildings:

- C. Restricted areas:
(with number and date of notice of declaration thereof)

with regard to A, B and C above, the hours determined by Council from time to time.

SCHEDULE C

Places where trading is restricted to demarcated stands and areas

PLACES

- A. Gardens and parks:
- B. Verges contiguous to the following - places of worship, national monuments and public buildings:
- C. Restricted areas:
(with number and date of notice of declaration thereof)

SCHEDULE D

Verges where trading is prohibited

THE VERGES CONTIGUOUS TO THE FOLLOWING:

- A. Public buildings:
- B. Places of worship:
- C. National monuments;

SCHEDULE E

Areas excluded from restriction on trading near residential buildings

- A. Townships and portions of townships:
- B. Public roads and portions of public roads: