

Street Trading By-laws

G.O: 2016-25/11/2011

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POLOKWANE,

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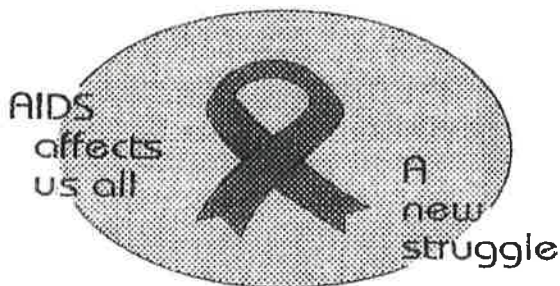
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**CONTENTS • INHOUD**

No.	LOCAL AUTHORITY NOTICE	<i>Page No.</i>	<i>Gazette No.</i>
344	Constitution of the Republic of South Africa, 1996: Ephraim Mogale Local Municipality: Street Trading By-laws .....	3	2016

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## LOCAL AUTHORITY NOTICE

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### LOCAL AUTHORITY NOTICE 344

#### EPHRAIM MOGALE LOCAL MUNICIPALITY

#### STREET TRADING BY-LAWS

Be it enacted by the Council of the Ephraim Mogale Local Municipality, in terms of Section 156(2) of the Constitution of the Republic of South Africa, 1996, read with section 11(3)(m) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), as follows:

#### TABLE OF CONTENT

No.	Subject	Page
1	Definition	1 - 2
2	Interpretation	2 - 3
3	Principles and objectives	3
4	Application	3
5	Designated areas	3
6	Restricted and prohibited areas	3
7	Places where street trading is prohibited	3 - 4
8	Duties of street trader	4 - 5
9	Prohibited conduct	5
10	Removal and impoundment	5 - 6
11	Disposal of impounded goods	6
12	Newspaper vendors	6
13	Penalty	6
14	Permission to participate in street trading	6 - 7
15	Responsibility of persons employing street traders	7
16	Appeal	7
17	Liaison forums in community	7
18	Revocation of by-laws	7
19	Short title and commencement Forms	7
	Forms	8 - 9

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## CHAPTER 1

1. **Definitions:** 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;

**"authorised official"** means –

- (a) an officer who is authorized by the Council to perform and exercise any or all of the functions and powers contemplated in this by-law;
- (b) a traffic officer appointed in terms of Section 3A of the National Road Traffic Act, 1996 [Act No. 93 of 1996];

**"by-law"** means Ephraim Mogale Local Municipality Street Trading By-Law;

**"municipal council"** or **"council"** means a municipal council referred to in section 157(1) of the constitution;

**"designated Area"** means an area prescribed by the Council in terms of this by-law, subject to the Act, as the area in which street trading can be conducted;

**"foodstuff"** means any article or substance, except a drug as defined in the Drugs and Drug Trafficking Act, 1992 [Act No. 140 of 1992], ordinarily eaten or drunk by persons or purporting to be suitable or manufactured or sold for human consumption and includes any part or ingredient of any such article or substance or any substance used or intended or destined to be used as a part or ingredient of any such article or substance, as defined in section 1 of the Foodstuff Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

**"garden"** or **"park"** means a garden or park 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 place or provided bins 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) Ephraim Mogale Local 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 Council in terms of Section 54A of the Local Government: Municipal Systems Amendment Act 2011 (Act 7 of 2011) 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 on 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;

"**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, fruit, vegetables and bread;

"**Premises**" includes any land, building, structure, part of a building or of a structure, or any vehicle/conveyance.

"**prescribed**" means prescribed by the municipality by Council 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, swimming pool, public open space, recreation site, river, dam, nature reserve, zoo-logical, botanical or other garden, 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 Council 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 a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

"**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);

"**Special Events**" means special events that occur from time to time, including, without limitation, sports events, religious events, social, cultural or political gatherings and music festivals;

"**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 designated / permitted area 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 Business Act, 1991, (Act 71 of 1991) have a corresponding meaning in this by-law.

## 2. Interpretation

- (a) A single act of selling, offering or rendering of services in public amenity constitutes street trading.
- (b) A reference to a person carrying on a business of street trader includes the employee of the person.

- (c) Reference to legislation includes regulations made thereunder - for the purpose of this by-law a reference to any legislation shall be a reference to that legislation and the regulations promulgated thereunder.

**3. Principles and objectives**

- (1) The Council, 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 in and around Ephraim Mogale Local municipal 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.

**4. Application**

This by-law applies to all persons who carry a business as street traders within the area of jurisdiction of Ephraim Mogale Local Municipality.

**CHAPTER 2**

**GENERAL PROVISIONS APPLICABLE TO STREET TRADING**

**5. Designated areas**

- (1) The Council may, by resolution in terms of Section 6A(3)(b) of the Act, set apart and demarcate stands or areas for the purposes of Street Trading on any Public Road, the ownership or management of which is vested in the Council, or on any other Property in the occupation and under the control of the Council.
- (2) Any such stands or areas demarcated for Street Trading may be extended, reduced or disestablished by resolution of the Council.

**6. Restricted and prohibited areas**

- (1) The Council 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 Council 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 Council 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.

**7. Places where street trading is prohibited**

- (1) Unless the Council 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 in 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) 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 (written permit) that municipality has let or allocated the area or stand to him or her; and
  - (c) may not transfer any written proof (written permit) that municipality has let or allocated the area or stand to him or her to another person.
- (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.

#### 8. 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 any structure 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 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:–
    - (i) at the permitted disposal sites of the municipality; or
    - (ii) 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 designated area or stand occupied by him or her: –
    - (i) ensure that the area which he or she uses does not exceed an area allocated to him or her.

- (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.

#### 9. Prohibited conduct

- (1) A street trader –
- (a) may not sleep 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;
  - (g) may not place his or her property in a public road or 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 place, on a public road or public amenity, his or her property that cannot be easily removed to a place of safety, which may not be a public road or public amenity, at the end of the day's business;
  - (j) 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;
  - (k) 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;
  - (l) 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;
  - (m) may not make an open fire that poses a health or environment hazard to any person or property or to street furniture;
  - (n) 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;
  - (o) may not store his or her property in a manhole, storm water drain, public toilet, bus shelter or a tree; and
  - (p) 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; and
  - (q) may not trade in front of a formal business in goods that are similar to any goods offered for sale by such formal trader.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

#### 10. 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 list of removed or impounded property;
  - (c) the conditions for the release of the impounded property; and
  - (d) 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.

**11. 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.

**12. 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 3**

**MISCELLANEOUS PROVISIONS**

**13. Penalty**

A person who has committed an offence in terms of these by-law 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.

**14. Permission to participate in street trading**

- (a) Any person who desires to participate in street trading, shall make an application on the prescribed form obtainable from the authorised official of the municipality.
- (b) Such forms shall be considered application to trade in Ephraim Mogale Local Municipality.

- (c) Permission shall be granted upon approval of the application, subsequent payment of a fee determined from time to time by Council after consultation with liaison forums becomes payable.
- (d) The permit shall be renewable annually on the anniversary date upon completion of the necessary form.
- (e) A monthly amount shall be charged to all street traders who are permitted to trade and such amount shall be determined from time to time by the council after consultation with liaison forums.
- (f) Receipt shall be issued every time such payment is made.
- (g) No person shall be permitted to trade without a valid trader's permit.
- (h) Street trader must keep his or her permit handy for routine inspection by authorised official.
- (i) Street trader must keep his or her receipt handy for routine inspection by authorised official.

**15. 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 can prove 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.

**16. Appeal**

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving a written notice of appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act 2000, (Act 32 of 2000) to the municipal manager within 21 days of the date of the notification of the decision.

**17. 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;
- (3)
  - (a) The municipality may, when considering an application for an approval, dictated by terms of this by-law, request the input of a liaison forum, such is however not obligatory.
  - (b) A liaison forum or any person or persons contemplated in subsection (2) may, on own initiative make an input on economic development to the municipality for consideration.

**18. 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.

**19. Short title and commencement**

This by-law shall be known as Ephraim Mogale Local Municipality Street Trading By-law and commences on the date of publication thereof in the Provincial Gazette.



**APPLICATION TO BE PERMITTED TO TRADE IN THE VICINITY OF  
EPHRAIM MOGALE LOCAL MUNICIPALITY**

<b>NAME OF APPLICANT</b>	
<b>ID NUMBER</b>	
<b>DATE OF BIRTH</b>	
<b>TYPE OF BUSINESS INTENDED</b>	
<b>POSTAL ADDRESS</b>	
<b>PHYSICAL ADDRESS</b>	<b>CODE</b>
<b>CELL NO.</b>	
<b>TEL. NO</b>	

\_\_\_\_\_  
**Signature of applicant**

**FOR OFFICE USE**

<b>STREET TRADE PERMIT NO.</b>		<b>STAND NO.</b>	
<b>EXPIRY DATE OF PERMIT</b>			
<b>AMOUNT PAID FOR PERMIT</b>			

\_\_\_\_\_  
**Name of Manager: Traffic & Protection Services**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

**EPHRAIM MOGALE LOCAL MUNICIPALITY**

ID PHOTO	<b>PERMIT</b> <b>TO TRADE WITHIN THE LEGAL BOUNDARIES OF THE MUNICIPALITY</b>
<b>Name of the trader</b>	
<b>ID number</b>	
<b>Permit number</b>	
<b>Expiry date of the permit</b>	
<b>Signature of permit holder</b>	
<b>Signature of the Director: Community services.</b>	
<b>Stand no.</b>	