

MALUTI-A-PHOFUNG LOCAL MUNICIPALITY

BY-LAWS RELATING TO THE SUPERVISION AND CONTROL OF THE CARRYING ON OF THE BUSINESS OF STREET VENDORS, PEDDLERS OR HAWKERS

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The Municipal Council of Maluti a Phofung resolved during a meeting on 27 November 2001, after complying to Section 12 of the Local Government: Municipal Systems Act No. 32 of 2000 as follows:

1. That in terms of Section 13 of the Local Government: Municipal Systems Act No. 32 of 2000, the By-laws relating to the Supervision and Control of the Carrying on of the Business of Street Vendor, Peddlers or Hawkers within the Municipality of Maluti a Phofung as published in the *OFS Provincial Gazette* on 5 October 2001 (Notice Number 26 of 2001) be adopted for the Maluti a Phofung Municipality.

2. That the By-laws be adopted with the amendments as stipulated hereunder:-

A. That where permission is granted by the relevant Department(s) of the Municipality of Maluti a Phofung certain hawkers not be restricted to one area and that they be allowed to sell their goods in the Maluti a Phofung area.

B. That all persons who sell goods within the Maluti a Phofung area adhere to the stipulations of these By-laws, notwithstanding the fact that they are permanent or temporary vendors, hawkers or peddlers.

3. That in terms of Section 13 of the Local Government: Municipal Systems Act No. 32 of 2000 the By-laws takes effect as from date of publication in the *Provincial Gazette*.

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1. Definition

In these By-laws, unless the context indicates otherwise, any expression to which a meaning has been assigned in the Business Act, 1991 (Act No. 71 of 1991) the Road Traffic Act, 1989 (Act No. 29 of 1989 and the Local Government Ordinance, 1962 (Ordinance No. 8 of 1962) shall, when used in these regulations, have the meaning thus assigned and:-

- (a) **“Council”** means the Council of the Municipality of Maluti-a-Phofung or any political structures, political office bearers or employees of the municipality to whom the council

has delegated decision making powers;

- (b) **“Municipality”** means the Municipality of Maluti-a-Phofung;
- (c) **“nuisance”** means any conduct which brings about or may bring about a state of affairs or condition which constitutes a health risk or a source of danger to human lives or property or which interferes with persons ordinary conform, convenience, peace or quiet;
- (d) **“officer”** means:-
 - (i) a traffic officer appointed under Section 3 of the Road Traffic Act, 1989 (Act 29 of 1989);
 - (ii) a member of the Force as defined in Section 1(1) of the Police Act, 1958 (Act 7 of 1958); or
 - (iii) a peace officer contemplated by Section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
- (g) **“sell”** includes to prepare, process, store, offer or display for sale, exchange or hire;
- (h) **“sidewalk”** means that portion of a verge intended for the exclusive use of pedestrians;
- (i) **“street vendor, peddler or hawkers”** means any person carrying on business, whether as principal, employee or agent, by selling any goods or services:-
 - (i) which is conveyed from place to place, whether by vehicle or otherwise;
 - (ii) on a public road or at any place accessible to the public;
 - (iii) in on or from a movable structure or stationary vehicle;
- (j) **“the Act”** means the Business Act, 1991 (Act No. 71 of 1991);
- (k) **“the Ordinance”** means the Local Government Ordinance 1962 (Ordinance No. 9 of 1962);
- (l) **“verge”** means that portion of the road, street or thoroughfare, which is not the roadway.

2. Carrying on of business

Subject to the provisions of these By-laws and other applicable legislation, a street vendor, peddler or hawker may carry on his business within the municipal area of the municipality.

3. Prohibited business areas

Subject to the provisions of Sections 2 and 4 no person shall carry on business as street vendor, peddler or hawker:-

3.1.1. in a garden to which the public has a right of access;

3.1.2. on a verge contiguous to:-

- (a) a building belonging to or occupied solely by the State or the municipality;

- (b) a church or other place of worship;
 - (c) a building declared to a national monument in terms of the National Monuments Act, 1969 (Act No. 28 of 1969);
- 3.1.3. in an area declared by the Council as a prohibited business area in terms of Section 6A (2) of the Act or an area to be declared as such;
- 3.1.4. at a place where:-
- (a) it caused an obstruction in front of a fire hydrant or an entrance to or exit from a building;
 - (b) it causes an obstruction to vehicle traffic;
 - (c) it substantially obstructs pedestrians in their use of a sidewalk;
- 3.1.5. on a verge contiguous to a building in which business is being carried on by any person who sells goods of the same nature as or of a similar nature to goods being sold by the street vendor, peddler or hawker concerned, without the consent of that person;
- 3.1.6. on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto.

4. Restricted business areas

- 4.1. The Council may by resolution, after compliance with the necessary requirements of the provisions of Section 6A(2)(b) up to (h) of the Act, declare any place within the municipal area of the municipality to be an area in which the carrying on of the business of street vendor, peddler or hawker may be restricted.
- 4.2. The Council may within the areas contemplated in subsection 4.1, restrict the carrying on of the business of street vendor, peddler or hawker to specified hours, specified places and specified goods or services.
- 4.3. The Council may within the area contemplated in subsection 4.1, by means of resolution:-
- 4.3.1. set apart and demarcate stands or areas for the purposes of street vendors, peddlers or hawkers on any public road whereof the management or ownership is vested in the municipality, or on any other property occupied and controlled by the municipality;
 - 4.3.2. extend, reduce or disestablish the stand or areas set apart and demarcated as such;
 - 4.3.3.

[Editor's note: No text published under 4.3.3 in PG 71/2001]
 - 4.3.4. let or otherwise allocate stand or areas set apart and demarcated as such, by agreement.
- 4.4. The Council may within the area contemplated in subsection 4.1, by means of resolution after compliance *mutatis mutandis* with the provision of Section 6A(2)(b) up to (h) of the Act, lease any verge or any portion thereof 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, peddler or hawkers on stands or places designated any such owner or occupier on such verge.

- 4.5. A person shall carry on the business of street vendor, peddler or hawker on stands or areas contemplated in subsection 4.3 and 4.4, only if he is in possession of proof that he is hiring such stand or area or that it has otherwise been allocated to him.
- 4.6. A person shall within the area as contemplated in subregulation 4.1, carry on the business of street vendor, peddler or hawker only during the hours, on the places and with the goods or services as contemplated in subregulation 4.2.

5. Control measures

5.1. No street vendor, peddler or hawker shall:-

5.1.1. sleep overnight at this place of business or erect any structure for the purpose of providing shelter, without the prior written approval of the Council;

5.1.2. carry on his business in such a manner as to:-

- (a) create a nuisance;
- (b) damage or deface the surface of any public road or public place or any other property of the municipality;
- (c) create a traffic hazard;

5.1.3. accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any refuse, scrap or waste material on any land or premises or on any public road or public place, other than in a refuse receptacle approved by the Council.

5.2. Every street vendor, peddler or hawker shall:-

5.2.1. remove from any public road or public place at the conclusion of trading, all waste, packaging material, stock and equipment of whatever nature which are utilised in connection with such business, unless prior written approval exempting him from this provision, has been given by the Council;

5.2.2. carry on his business in such a manner as not to be a danger or threat to public health or public safety;

5.2.3. at the request of an officer of an employee of the municipality, move or remove any goods, receptacle, vehicle or movable structure used for his business.

6. Removal and impoundment

6.1. An officer may remove and impound any goods, receptacle, vehicle or movable structure:-

6.1.1. which he reasonably suspects are being used or an intend to be used or have been used in or in connection with the carrying on of a business of a street vendor, peddler or hawker;

6.1.2. which he finds at a place where:-

- (a) the carrying on of the business of a street vendor, peddler or hawker is prohibited in terms of Section 3;
- (b) the business of a street vendor, peddler or hawker is being carried on contrary to the provisions of Section 4;

6.1.3. which street vendor, peddler or hawker has failed or refused to remove from the place after having been requested to do so by an officer or an employee of the municipality, or which have been left there or abandoned.

6.2. An officer acting in terms of subregulations 6.1, shall:-

6.2.1. issue to a street vendor, peddler or hawkers a written proof for any goods, receptacle, vehicle or moveable structure so removed and impounded;

6.2.2. forthwith deliver any such goods, receptacle, vehicle or movable structure to the Council.

6.3. An officer, the municipality or an employee of the municipality, shall not be liable for any loss or theft of or damage to any goods, receptacle, vehicle or movable structure removed and impounded in terms of these regulations

7. Display of approval

A street vendor, peddler or hawker shall carry on his person any written approval granted or issued to him by the council in terms of these By-laws and shall on demand show such written approval to an officer or an employee of the municipality.

8. Delegation

With the exception of the powers mentioned in Sections 2, 3 and 4, the Council may delegate or assign in writing any power, duty or function imposed by or under these By-laws upon the Council, to any person in its employ subject to such conditions as it may deem necessary.

9. Offence and penalties

9.1. A person who:-

- (a) contravenes any provision of these regulations or fails to comply therewith or with any condition imposed in terms thereof;
- (b) threatens, resists, interferes with or obstructs any officer or any employee of the municipality in the performance of his duties or functions in terms of or under these regulations; or
- (c) deliberately, furnishes, false or misleading information to an officer or an employee for the municipality, shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding three months.

9.2. Any person who, after conviction in terms of these By-laws, persists in the conduct or neglect which caused the offence, shall be guilty of an offence and liable upon conviction to a period of imprisonment not exceeding six months or community service or a fine not exceeding R20 000-00, or a combination of the aforementioned.

- 9.3. Any expense incurred by the municipality as a result of a contravention of these By-laws or in the doing of anything which a person was directed to do under these By-laws and which he failed to do, may be recovered by the municipality from the person who committed the contravention or who failed to do such thing.

10. Repeal of existing municipal regulations

The provisions of any By-laws or regulations relating to the Supervision and Control of the Carrying on of the Business of Street Vendors, Peddlers or Hawkers are hereby repealed.

11. Short title

These By-laws are called the Hawkers By-laws of the Maluti-a-Phofung Municipality.