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# **BUSINESS AND STREET TRADING CONTROL BY LAW**



**To provide for the control of business trading and  
street trading in the Dr. J.S. Moroka Local  
Municipality, and for matters connected  
therewith.**

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Notice is hereby given in terms of Section 13 of the Local government: Municipal Systems Act, 32 of 2000, read with sections 156 and 162 of the constitution of the Republic of South Africa, 1996 (Act No.108 of 1996), that DR JS Moroka Local Municipality resolved to adopt the following Street Trading By-laws under resolution number \_\_\_\_\_, and the By law will take effect from date of publication.

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## INDEX

1. Definitions and interpretation
2. Preamble
3. Objectives
4. Freedom of trade
5. General conduct of traders
6. General conduct of traders
7. 4. Cleanliness
8. 5. Obstruction of pedestrians
9. Obstruction of vehicular traffic
10. Trading restricted to specified hours in certain places
11. Trading restricted to specified goods or services in certain places
12. Trading restricted to demarcated stands or areas in certain places
13. No trading in stands or areas which have been let except by the lessee
14. No trading near certain public buildings, places of worship and national
15. No trading in prohibited area
16. Signs indicating restrictions and areas
17. Trading near residential buildings
18. Trading near certain business premises
19. Vending of newspapers and flowers
20. Vending of ice-cream
21. Application for and issuing of written permissions
22. Duration, renewal, lapse and withdrawal of written permissions
23. Designated areas and hours of trade
24. Street trading restricted to allocated lots or stands in certain designated areas
25. Display of signs by the Municipality
26. Street trading from mobile stands
27. Removal and impoundment
28. Offences

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- 29. Penalties
  - 30. Presumptions
  - 31. Vicarious responsibility of persons carrying on business
  - 32. Vicarious responsibility of employees
  - 33. Short title

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### Interpretation/Definitions:

1. (1) In these by-laws, unless the context otherwise indicates.
  - (i) **"Act"** means the Mpumalanga Businesses Act, 1996(Act 2 of 1996);
  - (ii) **"authorised officials"** means an official of the Council authorized to implement the provisions of these by-laws including Peace Officers, Traffic Officers and the South African Police Service.
  - (iii) **"Council"** means the Dr JS Moroka Local Municipality
  - (iv) **"Demarcated Stand"** means a demarcated stand as declared under Section 7(3) (b) (i) of the Act.
  - (v) **"garden or park"** means a garden or park to which the public has a right of access;
  - (vi) **"goods"** includes a living thing and any transferable interest;
  - (vii) **"intersection"** means an intersection as defined in section 1 of the Road Traffic Act, 1989 (Act 29 of 1989)
  - (viii) **"litter"** includes any container or other matter which has been discarded, abandoned or left behind by a person trading or his customers;
  - (ix) **"national monument"** means a building declared to be a national monument under the National Monument Act, 1969 (Act 28 Of 1969);
  - (x) **"Perishable foodstuffs"** means foodstuffs as defined in terms of the Foodstuffs, Cosmetics and Disinfectant Act 1972 (Act 54 of 1972);
  - (xi) **"Person"** includes a person carrying on any business referred to in Item 3(1) of Schedule 1 of the Act;
  - (xii) **"prohibited area"** means any place declared under Section 7(2) (a) of the act in which street trading is prohibited;
  - (xiii) **"property"** in relation to a person carrying 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 includes goods in which he trades;

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- (xiv) **"public building"** means a building belonging to or occupied solely by the State or the Council;
- (xv) **"public place"** means a public place as defined in Spatial Planning and land use management Act, 2003 (Act No. 16 of 2003).
- (xvi) **"public road"** means a public road as defined in Section 1 of the Road Traffic Act, 1989(Act 29 of 1989);
- (xvii) **"restricted area"** means any place declared under Section 7(2)(a) of the Act in which street trading is restricted;
- (xviii) **"roadway"** means a roadway as defined in Section 1 of the Road Traffic Act, 1989;
- (xix) **"sell"** includes supply to and also
- (a) Exchange or hire;
  - (b) Store, process,expose,offer or prepare for sale;
- And sale has a corresponding meaning;
- (xx) **"services"** includes any advantage or gain for consideration or reward offered in a restricted area;
- (xxi) **"sidewalk"** means a sidewalk as defined in Section 1 of the Road Traffic Act, 1989
- (xxii) **"Land use management Scheme"** means the **Land use management Scheme** of DRJSMLM Municipal area.
- (xxiii) **"Trade"** means to sell goods or services in a public road or public place, and trading has a corresponding meaning;
- (xxiv) **"verge"** means a verge as defined in Section 1 of the Road Traffic Act, 1989, and any word or expression to which a meaning has been assigned in the Mpumalanga Business Act, 1996, shall have that meaning.
- "Tariff"**
- (xxv) Any reference to a gender includes the other gender.

Commented [MM1]: Refer to the tariff policy for a definition

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## 1.2 PREAMBLE

### WHEREAS

The Dr JS Moroka Local Municipality as the local authority regulates formal and informal trading;

Whereas Section 156 of the Constitution of the Republic of South Africa ,1996 (Act No. 108 of 1996) read in conjunction with section 12 and 13 of the Local Government: Municipal Systems Act,2000 (Act No. 32 of 2000) as amended;

Therefore be it enacted as follows:

## 1.3 Objectives

To regulate formal and informal business trading.

To regulate matters connected to trading within the ambit of the law.

To control the manner in which trading must be conducted taking into account applicable legislative prescripts.

To enforce compliance in instance of contravention of any provision of the by-law and matters connected therewith.

1.4. Legislations specifically referred to in the context of this by-law:

1.4.1. Mpumalanga Businesses Act, 1996(Act 2 of 1996)

1.4.2.Road Traffic Act, 1989 (Act 29 of 1989)

1.4.3. National Monument Act, 1969 (Act 28 Of 1969)

1.4.4. Foodstuffs, Cosmetics and Disinfectant Act 1972 (Act 54 of 1972);

1.4.5.Spatial Planning and land use management Act, 2003 (Act No. 16 of 2003).

1.4.6.National Prosecuting Authority Act, 1998 (Act No. 32 of 1998).

1.4.7. The Constitution of the Republic of South Africa ,1996 (Act No. 108 of 1996).

1.4.8 Local Government: Municipal Systems Act,2000 (Act No. 32 of 2000) as amended.

1.4.9 Local Government: Municipal Finance Management Act, 2003 (Act No.56 of 2003).

1.4.10 Criminal Procedure Act,1977(Act No. 51 of 1977).

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- 1.4.11 Health Act, 1977 (Act No.63 of 1977) as amended.
- 1.4.12 National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977).

## **2. Freedom to trade**

Subject to the provisions of section 3 and 4 and any other relevant law, street trading is freely permitted except in so far as such trading is restricted or prohibited by Section 5 to 12 inclusive and section 14 and 15 of these by-laws, with the provision that no persons other than person with permanent residence in south Africa or south African citizens may trade in accordance with these by-laws.

## **3. General conduct of traders**

### **. 3.1 Cleanliness**

a person doing business as a trader shall-

- (a) keep his or property or goods and the designated area in a clean and sanitary condition,
- (b) dispose of litter generated by his or her business in whatever receptacles provided thereof by the Municipality, including recycling and dumping sites, and not dispose of litter in any manhole, storm water drain or other place not intended for the disposal of litter;
- (c) ensure that on completion of business for the day, the designated area is free from litter;
- (d) take such precaution as may be necessary or prescribed by the Municipality to prevent the spilling onto a public place of any fat, oil, grease or any hazardous substances which might be generated in the course of conducting his or her business and to prevent that any smoke, fume, outdoor or noise emanating from his or her activities become a nuisance.
- (e) comply with the general health by- laws of the Municipality



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- (f) work with and comply general health conditions set by Mpumalanga department of health
  - (g) work closely with Nkangala District waste division on disposal of health hazardous substances
  - (h) *No person is allowed to sleep in business premises (shop).*
  - (i) *No stock must be packed on the floor inside the business and both owner and customer must be able to see through under the shelves.*
  - (j) *All businesses must have fire extinguisher.*
  - (k) *All businesses must have windows, for the business to have enough Ventilation.*
  - (l) *All the building owners must ensure that the business premises are clean.*
  - (j) *No smoking allowed in the business.*
  - (k) *No tobacco allowed to be sold to under age children.*

(2) The Municipality shall-

- (a) provide receptacles at designated areas in order to facilitate the disposal of litter by street traders;

(b) ensure that the receptacles at designated areas are emptied, cleaned and sanitized on a regular basis

#### **4 Prohibited activities**

A person trading shall not-

- (a) place his or her property or goods in a public place that is not a designated area;
- (b) allow his or her property or goods to cover an area that his or her allocated lot or stand in designated area listed by the Municipality;

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- (c) place or stack his or her property or goods in such a manner that it constitutes a danger to any person or property or is likely to injure any person or damage property;
  - (d) erect any structure for the purpose of providing shelter at the designated area without the prior written approval of the authorized officer;
  - (e) obstructs access to a fire hydrant or area demarcated solely for the purpose of and use of emergency vehicles or services;
  - (f) leave his or her property or goods at the designated area before or after trading hours, except in a permanent structure provided by the Municipality for that purpose;
  - (g) when requested by an employee or agent of the Municipality or any supplier of telecommunications, electricity or other services, omit or neglect to move his or her property or goods so as to permit the carrying out of any work with regard to a public place or any such service;
  - (h) attach any object or goods by any means to any building, structure, pavement, tree, parking, meter, lamp post, electricity pole, telephone booth, post box, traffic sign, fence, bench, or any other street furniture in, on or at a public place;
  - (i) make an open fire at the designated area or in circumstances where it could harm a person or damage a building or vehicle;
  - (j) do anything or keep combustibles in quantities contrary to the provisions of any law regarding the sale of fire crackers, prevention or fighting of fires;
  - (k) disregard a reasonable requirement put by any officer of the Municipality commissioned with the prevention or fighting of fires, regarding his or her trade;
  - (l) store his or her property or goods in a manhole, storm water drain, bus shelter, public toilet or tree;
  - (m) sell his or her goods by using a megaphone, radio, loudspeaker, or by constant shouting or disturbance;

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- (n) sell any property or goods which are dangerous or hazardous to the public health.

### **3.2 . Obstruction of pedestrians**

No person shall trade at a place where such trading substantially-

- (a) obstructs access to or the use of street furniture such as a bus passenger bench or shelter or queuing line, a refuse disposal bin or other facility in intended for the use of the general public;
- (b) obstructs the visibility of a display window in business premises, if the person carrying on business in the business premises concerned objects thereto;
- (c) obstructs access to entrance to or exit from a premise or an automatic bank teller machine;
- (d) obstructs access to a pedestrian crossing, if in the middle of a block a clear radius distance of 3m on either side of the crossing must be obeyed;
- (e) obstructs access to any vehicle; or
- (f) in any other manner obstructs pedestrians in their use of a sidewalk,

### **3.3Obstruction of vehicular traffic**

No person shall trade at a place where such trading-

- (a) cause an obstruction on a roadway;
- (b) limits vehicular access to parking or loading bays or other facilities;
- (c) obscures any road traffic sign or any marking, notice or sign displayed or made in terms of these by-law; or

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- (d) interferes in any way with any vehicle that may be parked alongside such place.

### **3.4 Trading restricted to specified hours 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 by Council resolution outside the hours so specified in relation to each such verge or area.

### **3.5 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 ,financial institutions; or
- (b) In a restricted area which is specified by Council resolution other than in the goods and services so specified in relation to each such verge or area.
- (c) As a barber of a hair dressing salon in a public place.

### **3.6 Trading restricted to demarcated stands or areas in certain places**

no person shall trade-

- (a) on a verge contiguous to any worship to any place of worship, national monument or public building; or
- (b) in a restricted area which is specified by council resolution outside a stand or area set apart for trading purposes as contemplated in Section 7(3) (c) of the Act, no person may trade on such stand or in such area if he is in possession of proof that he has hired such stand or area from the council to that otherwise it has been allocated to him.

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### **3.7. No trading in stands or areas which have been let except by the lessee**

if the council has let or otherwise allocated any stand or area set apart otherwise established for street trading purposes, as contemplated in section 7(3) (c) of the Act, no person may trade on such stand 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.

### **3.8. No trading near certain public buildings, places of worship and national monuments.**

no person shall trade on a verge contiguous to any place of worship, national monument or public building which is specified by council resolution.

### **3.9 No trading in prohibited area**

no person shall trade in any prohibited area.

### **3.10 Signs indicating restrictions and areas**

The council shall-

- (a) by resolution, prescribe signs, markings or other devices indicating-
  - (i) specific 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 for the purposes of the carrying on of the business of street trading under section 7(3) (b) of the Act;
  - (iv) the fact that any such stand or area has been let or otherwise allocated;
  - (v) any restriction or prohibition against trading in terms of these by-laws; and

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- (vi) the location or boundaries of a prohibited area; and
  - (b) 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.

### 3.11 **Trading near residential buildings**

no person shall, outside an area referred to in section 7 to 12 inclusive, trade in that half of a public road contiguous to a building used for residential purposes within the demarcated areas of trading as specifies in terms of these by-laws, if the owner, person in control or any occupier of any part of the building facing onto such road has objected thereto, provided that in a township or portion thereto mentioned in a resolution of the council, this section shall not apply to a building used for residential purposes if such building is used for business purposes at ground level.

### 3.12 **Trading near certain business premises**

no person shall, outside an area referred to in section 7 to 12 inclusive, trade on a verge contiguous to that part of 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 first-mentioned person, other than a department store or supermarket without the consent of the second-mentioned person.

### 3.13 **Street trading restricted to allocated stands in certain designated areas**

- (1) The Municipal Manager may, when granting permission to an applicant to do business as a street trader, allocate a specific stand demarcated in a designated area to the applicant, and no other person, except his or her assistant or employee, may do business on or from such lot or stand.
- (2) a street trader to whom a specific stand was allocated shall –
  - (a) do business only on or from such stand;

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- (b) not sub-let or transfer to any other person the right to do business or from such stand;
  - (c) be in possession of proof that permission was granted and, on request, produce such proof to an authorized officer.
- (3) The designated areas in which trading may only be done from a specific demarcated stand as would be determined by Council;
- (4) Let the municipality assist with shelters for street vendors based on the availability of the resources..

#### 4. **Vending provisions**

##### **4.1 Vending of newspapers and flowers**

- (a) Notwithstanding any other provision of these by-laws, and unless an intersection is otherwise specified by council resolution as a prohibited or restricted area ,no person other than a person who sells newspapers and flowers may carry on business on any sidewalk within 5 metres from any intersection.
- (b) No person who sells newspapers shall deposit his wares upon the ground or surface of any public place for the purpose of sale otherwise than in an orderly pile neatly stacked and not exceeding 1m in length measured parallel to the kerb, or roadway ,450mm in width and 500mm in height above the sidewalk level.

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## 4.2 Vending of ice-cream

(a) Street vendors trading in ice-cream are permitted to trade from either a self-propelled motor vehicle, a bicycle, a tricycle or on foot in any street within residential areas and adjacent to school premises provided that the free-flow of traffic should not be interfered with.

## 5. Application for and issuing of written permissions

(5.1) an application for permission to do business as a trader must:

- (a) be directed to the Municipal Manager
- (b) be in a form determined by the Municipality and payment of non refundable application fee.

**Commented [MM2]:** Application for business licence form to be attached as annexure 1

- (c) be accompanied by the tariffs to be paid upon approval of the application as determined by the Municipality

in accordance with the tariff policy, as well as tariffs for services or structures provided by the Municipality at the designated area, where applicable.

(5.2) The Municipal Manager must acknowledge the application within thirty (30) days of receipt..

(5.3) The Municipal Manager must consider whether to approve or refuse the grant of application within a period of 90 days.

(5.4) If the application is successful, the Municipal Manager must forthwith issue the written permission setting out the conditions within which it is issued but not limited to land use rights.

(5.5) If the application is unsuccessful, the Municipal Manager must forthwith notify the applicant accordingly and provide written reasons for his or her decision.

(5.6) The provisions of section 62 of the Local Government: Municipal Systems Act, 2000 (Act: 32 of 2000), shall *mutatis mutandis* apply to an appeal against a decision of the Municipal Manager contemplated in section (5.5).



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## 6. Duration, renewal, lapse and withdrawal of written permissions

(6.1) A written permission to do business as a trader shall –

- (a) be granted for a period not exceeding twelve (12) months
- (b) be extended for a period of 12 months at a time if payment of the tariffs as determined by the Municipality is made by a trader concerned before the end of the initial period of 12 months or each further period of 12 months, as the case may be;
- (c) lapse if the tariffs contemplated in paragraph (b) is not paid on time.

(6.2) **The Municipality may withdraw its permission to do business if the trader:.**

- (a) does not comply with or acts contrary to any condition set out in the permission;
- (b) contravenes or fails to comply with any provision of this By-law or any other law;
- (c) fails to obey or comply with a lawful direction or request given or made by an authorized officer;
- (d) Ignores or contravenes the provisions of a sign or notice displayed by the Municipality in terms of this By-law.

(6.3) **Requirements to do or conduct business as trader includes;**

- (a) Application letter;
- (b) ID Copy;
- (c) Ward Councilor recommendation letter;
- (d) Letter from a recognized traditional Authority if the applicant or the business is within the tribal Authority;

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- (e) sketch map (informal trading) or approved building plan (formal trading) where the business will be situated;
  - (f) Permission to occupy or a title deed and recommendation letter from traditional Authority ;
  - (g) Land use rights permit; or
  - (h) Zoning certificate;
  - (I) application fee determined by the municipality from time to time.
  - (J) *Submit Municipal rates statement not owing for more than three months.*
  - (k) if a person is a foreign national must produce visa or relevant required documents but not limited to the ones required by the Department of Labour and Home Affairs, before he or she can be licensed.

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### **7. Designated areas and hours of trade**

- (7.1) these designated areas shall be determined by Council from time to time:
- (7.2) No person shall do business as a trader, except during the hours 07h00 to 19h00 from Monday to Sunday. After normal trading hours, the permission should be obtained from the Municipality.
- (7.3) The trading hours should be 06H30 to 20H30 to accommodate people who are coming from work late.

**Commented [MM3]:** Trading hours be aligned to Mpumalanga business Act

**8.**

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### **8. Display of signs by the Municipality**

The Municipality may display any sign or notice to give effect to the provision of this By-law.

### **9. Street trading from mobile stalls**

Notwithstanding the provisions of this By-law, the Municipality may allot tenders to persons to trade from mobile stalls, subject to the conditions determined by the municipality.

### **10. Removal and impoundment**

- (1) an authorized Municipal Law enforcement officer with the assistance from the SAPS may remove and impound any article, receptacle, vehicle or structure –
  - (a) which he or she reasonably suspects is being used or has been used for or in connection with street trading; and
  - (b) which he or she finds at a place where street trading is restricted or prohibited in terms of this By-law which, in his or her opinion,
  - (c) constitutes an infringement of this By-law.
- (2) An authorized Municipal Law enforcement officer acting in terms of this By-law shall –
  - (a) keep proper record of any property so removed at the South African Police Services or any other designated area for that purpose and must inform the person apparently in control of such property (if there is such a person), of the procedure to be followed for reclaiming such property and the venue where such property will be impounded; and
  - (b) forthwith deliver any such property to the pound referred to in paragraph (a).

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- (3) Any property removed and impounded as contemplated in subsection (1) –
- (a) may, in the case of perishable property not collected within a period of thirty days, the owner will be liable for payment of a penalty fee determined in accordance with the Municipal tariff policy.
  - (b) Subject to sub section (b), at any time prior to the disposal or selling thereof, be returned on proof of ownership and: provided further, that such perishables are still fit for human consumption;
- (4) The municipality shall be entitled to keep the property concerned until all expenses have been paid, failing which the property may be sold by public auction upon 14 days' notice: provided that where the property attached is perishable, the authorised officer may reduce the period of 14 days to such an extent as he or she may think fit, or destroy the perishable, whichever is the most cost-effective.
- (5) In the case for a sale of impounded property by the municipality, the proceeds of such sale, less the reasonable expenses incurred by the municipality in connection with the removal, impoundment or disposal of such property., shall be paid to the person who was the owner of such property when such property was impounded, but if such former owner fails to claim the said proceeds within 3 months of the date on which such property was sold , such proceeds shall be forfeited to the Municipality and shall be paid into a special fund created by the municipality dictated to the development of the informal sector and matters ancillary thereto.
- (6) The owner of property which has been removed, impounded, sold or disposed of as contemplated in this section, shall be liable for all expenses incurred by the municipality in connection with such removal, impoundments, sale or disposal.

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## **11. Offences**

Any person who –

- (a) contravenes or fails to comply with any provision of this By-law; ignores, disregards or disobeys any notice, sign or marking displayed or erected in terms of this By-law;
- (b) contravenes or fails to comply with any approval granted or condition imposed in terms of this By-law;
- (c) fails to comply with a lawful written instruction by the municipality to move or remove his or her property;
- (d) deliberately furnishes false or misleading information to an officer or an employee of the municipality; or
- (e) threatens, resists interferes with or obstructs an officer or employee of the Municipality in the performance of his or her powers, duties or functions under this By-law, shall be guilty of an offence.

## **12. Penalties**

Any person guilty of an offence in terms of this By-law shall on conviction be liable to a fine or to imprisonment for a period not exceeding three months or any other relief as the court may deem fit.

## **13. Presumptions**

- (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 or as it may be described by resolution of the council;
  - (b) Any goods or services were sold or offered for sale;

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- (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 proceedings for the contravention of these by-laws, where it is shown that-
- (a) any goods were displayed in a public place ,such goods shall be presumed to have been offered for sale;
  - (b) 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.

#### **14. Vicarious responsibility of persons carrying on business**

- (1) When an employee or assistant of a person doing business as a street trader, does or omits to do any act w be an offence in terms of this By-law, that person shall be deemed himself or herself to have done or omitted to do the act, unless he or she satisfies the court that –
  - (a) he or she neither connived at nor permitted the act or omission by the employee or assistant concerned; and
  - (b) he or she took all reasonable steps to prevent the act or omission.
- (2) The fact that the street trader alleges that he or she issued instructions whereby an act or omission is prohibited shall not itself be sufficient proof that he or she took all reasonable steps to prevent the act or omission.

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**15. Vicarious responsibility of employees**

When a person doing business as a street trader is liable for an act or omission by an employee or assistant, that employee or assistant shall also be liable as if he or she were the person carrying on the business concerned.

**16. Short title**

This By-law shall be called the Business and Street Trading Control By-law

## SCHEDULE 1

### DECLARING AREAS: STREET TADING –DR JS MOROKA LOCAL MUNICIPALITY AREA

the DR JS Moroka Local Municipality hereby gives notice in terms of section 7(2) (f) of the Mpumalanga Business Act ,1996 (Act No.2 of 1996),that the DR JS Moroka Local Municipality resolved under Council Resolution Number.....,dated.....,by adding the following:

#### SITES FOR INFORMAL TRADERS

<b>Proposed</b>	<b>Total</b>	<b>Location of sites</b>	
<b>No street name</b>	<b>20</b>	Open space adjacent to Erf 1633, 1634 and 1635 Siyabuswa ext D2 opposite the graveyards	
Demarcated site number	Street	Location of hawking	Number of hawkers
1	Cnr Bongimfundo Street and Maqhawe Street	Portion of portion 48 of the Valschfontein 33 JS	20
2	R573	Adjacent to Erf 33 (portion of portion 12) Valschfontein 33 JS	11



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ANNEXURE 1

**APPLICATION FOR BUSINESS LICENCE**

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ANNEXURE 2

**OCCUPATION OF SITE FORM FOR INFORMAL TRADERS**

**Commented [MM4]:** Occupation of site Form to be attached on the document as annexure 2