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Informal Trading By-laws, 2009

The Municipal Manager of the City of Johannesburg Metropolitan Municipality hereby in terms of section 13(a) Local Government Municipal Systems Act, 2000 (Act 32 of 2000), publishes Informal Trading By-laws for the City of Johannesburg Metropolitan Municipality as approved by its Council, as set out hereunder.

Purpose of By-law

A. The City recognises the objective of its existence in terms of the Constitution, which includes -

(i) to promote social and economic development:

(ii) to promote a safe and healthy environment; and

(iii) municipal planning, trading regulations, licensing and control of undertakings that sell food to the public, markets, public places, municipal roads and street trading.

B. The City therefore recognises the need to adopt a developmental approach to enable access to job and entrepreneurial opportunities within the Informal Trading sector, to harmonise the relationship between the Informal Trading sector and the formal trading sector and to facilitate the migration of Informal Trading into the formal trading sector.

C. In order to achieve and fulfill the abovementioned constitutional objective and responsibility, and after an extensive consultation process with the relevant stakeholders, the City has adopted an Informal Trading policy, which aims at creating opportunities for the Informal Trading sector to share in the benefits of, and further contribute to, the City's economic growth.

D. The purpose of this By-law is therefore to regulate Informal Trading within the jurisdictional area of the City in a manner that recognises and enhances the City's constitutional and other statutory obligations.

1. Definitions

In this By-Law, words used in the masculine gender include the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates -

"the Act" means the Businesses Act, 1991 (Act No. 71 of 1991) and includes the regulations promulgated thereunder;

"Authorised Official" means -

- (a) an official of the Council who has been authorised by it to administer, implement and enforce the provisions of 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);

- (c) a member of the police service, as defined in terms of section 1 of the South African Police Service Act, 1995 [Act No. 68 of 1995]; or
- (d) a peace officer, contemplated in terms of Section 334 of the Criminal Procedure Act, 1977 [Act No. 51 of 1977];

"City" means the City of Johannesburg;

"Council" means:

- (a) the Municipal Council of the City, which exercises its legislative and executive authority; or
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction where any power in these by-laws has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) ("the Municipal Systems Act"); or
- (d) a service provider fulfilling a responsibility under these by-laws, assigned to it in terms of section 81(2) of the Municipal Systems Act or any other law, as the case may be.

"Designated Area" means an area Prescribed by the Council in terms of this ByLaw, subject to the Act, as the area in which Informal 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 of access;

"Goods" means any movable property and includes a living thing;

"Impoundment Costs" means all those costs incurred by the City in respect of impounding and storing of impounded Goods or Property and, where applicable, costs incurred in respect of disposal of impounded Goods;

"Informal Trader" means a person who engages in Informal Trading;

"Informal Trading" means the selling of goods and/or services by an Informal Trader in the Designated Area, which includes, without any limitation, the forms of trading more fully set out in Section 3;

"Intersection" means an intersection as defined in the regulations promulgated in

terms of the Traffic Act;

"Kerb Line" means, as defined in Section 1 of the Traffic Act, the boundary between the Shoulder and the Verge or, in the absence of a Shoulder, the part between the edge of the Roadway and the Verge;

"Linear Market" means a Designated Area located in a pedestrianised environment.

"Litter" includes any receptacle, container or other matter, which has been discarded, abandoned or left behind by an Informal Trader or by his or her customers;

"Motor Vehicle" means any self-propelled vehicle as more fully defined in Section 1 of the Traffic Act;

"Periodic Markets" means sale of legal goods and/or services by individuals and/or groups, in locations designated for Informal Trading for a period no longer than 5 days

"Prescribed" means as determined by resolution of the Council from time to time;

"Property", in relation to an Informal Trader, includes any article, Goods container, Motor Vehicle or structure used or intended to be used in connection with Informal Trading;

"Public Building" means a building belonging to or occupied solely by any sphere of the government, including the Council;

"Public Monument" means any one of the "public monuments and memorials" as defined in terms of section 2 of the National Heritage Resources Act, 1999 [Act No. 25 of 1999];

"Public Place" means any square, park, recreation ground or open space which is vested in the Council or to which the public has the right to use or is shown on a general plan of a township filed in the deeds registry or a Surveyor-General's office and has been provided for the use of the public or the owners of erven in such township;

"Public Road" means, as more fully defined in Section 1 of the Traffic Act, any road, street or thoroughfare or any other place commonly used by the public or any section thereof or to which the public or any section thereof has a right of access;

"Rental" means an amount payable by the Informal Trader for the allocated trading space in the Designated Area as agreed between the Council and an Informal Trader;

"Roadway" means, as defined in Section 1 of the Traffic Act that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic, which is between the edges of the roadway;

"Sell" includes -

- (a) barter, exchange or hire out;

- (b) display, expose, offer or prepare for sale;
- (c) store on a Public Road or Public Place with a view to sell; or
- (d) provide a service for reward,

and "Sale" or "Selling" has a corresponding meaning;

"Sidewalk" means, as defined in Section 1 of the Traffic Act, that portion of a Verge intended for the exclusive use of pedestrians;

"Shoulder" means, as defined in the Traffic Act, that portion of the road, street or thoroughfare between the edge of the Roadway and the Kerb line;

"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 Council on the street for public use;

"the Traffic Act" means the National Road Traffic Act, (Act No. 93 of 1996); and

"Verge" means, as defined in Section 1 of the Traffic Act, that portion of a road, street or thoroughfare, including the Sidewalk, which is not the Roadway on the Shoulder.

2. Interpretation

(2.1) Meaning of words and expressions in the Act incorporated in this By-Law - Unless the context otherwise indicates, any words or expressions to which a meaning has been assigned in the Act shall have a corresponding meaning in this By-Law.

(2.2) Single act constitutes Informal Trading - For the purpose of this By-Law a single act of selling or offering or rendering of services in a public road or public place shall constitute Informal Trading.

(2.3) 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.

(2.4) Assigning responsibilities of a Council employee to an employee of a service provider, where a service provider has been appointed - If any provision in this By-Law imposes any responsibility of the Council in or on of an employee the Council and such responsibility has, in terms of Section 76(b) of the Municipal Systems Act or any other law, been assigned to a service provider, then the reference in such a provision to such employee must be read as a reference to the service provider or a duly authorized employee of the service provider.

3. Forms of Informal Trading

- (1) Informal Trading may include any of the following forms of trading -
 - (a) street trading, which comprises the selling of goods or supply of services for revenue in a Public Road;
 - (b) selling of Goods in Linear Market;
 - (c) sale of Goods or services in a Public Place;
 - (d) mobile trading such as from caravans, and light Motor Vehicles;
 - (e) Selling of Goods in stalls or kiosks; and
 - (f) Selling of Goods at Special Events;

4. Freedom to engage In Informal Trading

Subject to compliance with the provisions of this By-law, the Act and any other applicable law, any member of the Community of the City may be permitted to engage in Informal 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 Informal 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 Informal Trading may be extended, reduced or disestablished by resolution of the Council.
- (3) The Council may, by resolution in terms of section 6A(3) (a) of the Act, lease any Verge or any portion thereof to the owner or occupier of the contiguous land on condition that such owner or occupier shall admit a specified number of Informal Traders in stands or places on such Verge designated by such owner or occupier.

6. Lease and allocation of stands

- (1) Any person who intends to carry on a business as Informal Trader in terms of the provisions of this By-Law may apply to the Council in the Prescribed manner for a lease or allocation of a stand in terms of section 6A(3)(c) of the Act.
- (2) The Council may grant subject to conditions, or refuse, an application referred to in subsection (1).
- (3) If such application is successful -
 - (a) an Informal Trader must enter into a lease agreement with the Council in respect of such stand, which lease agreement must be produced at the request of an

Authorised Official;

- (b) in respect of the allocation, as well as the lease of a stand a token shall be issued to an Informal trader as proof of an Informal Trader's rights to occupy the stand for the purpose of conducting Informal Trading;
 - (c) an Informal Trader must, at all times while carrying on business on the stand or public space, retain such token on his/her person ready for display to an Authorised Official, if requested; and
 - (d) the Council may, on the written request of an Informal Trader, issue a token to a bona fide employee of the Informal Trader.
- (4) Any person who carries on Informal Trading on a stand or Public Place and who, without a reasonable explanation, is unable to produce a valid lease agreement or token as envisaged in subsection (3) above, shall be guilty of an offence.
- (5) Any person who carries on Informal Trading on a stand or Public Place and who, without a reasonable explanation, fails to comply with the terms and conditions of the lease agreement shall be guilty of an offence.

7. Environmental Health and Safety

- (1) An Informal Trader must-
- (a) keep the area or site occupied by him or her for the purposes of conducting Informal Trading in a clean and sanitary condition;
 - (b) keep his or her Property in a clean, sanitary and well maintained condition;
 - (c) dispose of Litter generated by his or her business in whatever refuse receptacle provided by the Council for the public or at a dumping site of the Council;
 - (d) not dispose of Litter in a manhole, storm water 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 or her for the purposes of conducting Informal Trading is free of Litter.
 - (f) take such precautions in the course of conducting his or her business as may be necessary to prevent the spilling onto a Public Road, or Public Place, or into a storm water drain, of any fat, oil or grease;
 - (g) ensure that no smoke, fumes, or other substance, odours, or noise, emanating from his or her activities associated with Informal Trading, causes pollution of any kind;
 - (h) on request by an Authorised Official, move his or her property so as to permit the cleansing of the space or the area or site, where he or she is conducting Informal Trading, or the effecting of Municipal Services.

8. Signs indicating restricted and prohibited areas

- (1) The Council may, by resolution in terms of Section 6A(2) of the Act, declare any place in its area of jurisdiction to be an area in which Informal Trading is restricted or prohibited, and must, to enable compliance therewith, Prescribe or make signs, markings or other devices indicating-
 - (a) specified places, goods or services in respect of which Informal Trading is restricted or prohibited;
 - (b) the location of boundaries in respect. of restricted or prohibited areas;
 - (c) the boundaries of a stand or area set apart for the purposes of the carrying on of the business of Informal Trading;
 - (d) the fact that any such stand or area has been let or otherwise allocated: and.
 - (e) any restriction or prohibition against Informal Trading in terms of this By-Law.
- (2) The Council may display any such sign, marking or device in such a position and manner as will indicate any restriction or prohibition and the location or boundaries of the area or stand concerned.
- (3) Any sign erected in terms of this By-Law or any other law, shall serve as sufficient notice to an Informal Trader of the prohibition or restriction in respect of the area concerned.
- (4) The resolution of the Council shall be subject to the provisions of section 6A (2) (b) to (j), which require, inter alia, that the Council first consider the effect its resolution will have on the existing Informal Traders in the Designated Area in question.
- (5) Any sign may be amended from time to time and displayed by the Council for the purpose of this By-Law and shall have the same effect as a road sign in terms of the Traffic Act.

9. Prohibited conduct

- (1) No person shall carry on the business of an Informal Trader-
 - (a) at a place or in an area declared by the Council in terms of section 6A(2) of the Act as a place or area in which Informal Trading is prohibited;
 - (b) in a Garden to which the public has a right of access;
 - (c) directly alongside-
 - (i) a building belonging to the South African Police and or a Police Station;
 - (ii) a church, mosque, synagogue or other place of worship;
 - (iii) a building declared to be a public monument;

- (iv) an autoteller bank machine;
 - (d) at a place where it causes an obstruction in respect of-
 - (i) a fire hydrant; or
 - (ii) any entrance to or exit from a building;
 - (e) at a place where it is likely to obstruct vehicular traffic;
 - (f) on that half of a Public Road, contiguous to a building used for residential purpose if the owner or person in control or any occupier of that building objects thereto and such objection is made known to the Informal Trader by an Authorised Official;
 - (h) on a stand or in any area demarcated by the Council in terms of Section 6A(3)(k) of the Act, if he or she is not in possession of written proof that he or she has hired such stand or area from the Council or that such stand has otherwise been allocated to him or her by the Council;
 - (i) within 5 [five] metres of any Intersection; and
 - (j) on a Sidewalk contiguous to a building in which business is being carried on by a person who sells goods of the same or of a similar nature to the goods being sold on such Sidewalk by the Trader, if the Goods are sold by the Informal Trader without the prior consent of such person and an Authorised Official has informed the Informal Trader that such consent does not exist
- (2) A person who has leased a stand from or who has been allocated a stand by the Council in terms of section 9 (1)(h) of this By-Law may not trade in contravention of the terms and conditions of such lease or allocation.

10. Restricted conduct

- (1) An Informal Trader-
- (a) may not sleep overnight at the place where he or she carries an Informal Trading activity;
 - (b) may not erect any structure for the purpose of providing shelter, other than a device approved by the Council;
 - (c) may not place his or her Property on a Public Road or Public Place, with the exception of his or her Motor Vehicle or trailer from which Informal Trading is conducted, provided that such Motor Vehicle, stalls or trailer does not obstruct pedestrian or Vehicular Traffic movement and complies with the provisions of the Traffic Act;
 - (d) must ensure that his or her Property or area of activity;-
 - (i) does not cover an area of a Public Road or a Public Place which is greater than 6 (six) square metres (with a maximum length of 3 (three) metres)

- in extent, unless otherwise approved by the Council; and,
- (ii) in respect of any Sidewalk, leaves an unobstructed space for pedestrian traffic, being not less than 1.5 (one and a half) metres wide when measured from any contiguous building to the Property or area of activity and not less than 0.5 (one half) metres wide when measured from the Kerb Line to the Property or area of activity;
- (e) may not trade on a Sidewalk where the width of such Sidewalk is less than 3 (three) metres;
 - (f) may not place or stack his or her Property in such a manner that it constitutes a danger to any person or property, or is likely to injure any person or cause damage to any property;
 - (g) 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;
 - (h) must, on request by an Authorised Official or supplier of telecommunication or electricity or other Municipal Services, move his or her Property so as to permit the carrying out of any work in relation to a Public Road, Public Place or any such service;
 - (i) may not attach any of his or her Property by any means to any building, structure, pavement, 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 Place;
 - (j) may not carry on such business in such a manner as to -
 - (i) create a nuisance;
 - (ii) damage or deface the surface of any Public Road or Public Place, or any public or private property; or
 - (iii) create a traffic or health hazard, or health risk, or both;
 - (k) may not make an open fire on a Public Road or Public Place;
 - (l) may not interfere with the ability of a person using a Sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
 - (m) may not obstruct access to a pedestrian crossing, a parking or loading bay or other facility for vehicular or pedestrian traffic;
 - (n) may not obstruct access to, or the use of, Street Furniture and any other facility designed for the use of the general public;
 - (o) may not obscure any road traffic sign displayed in terms of the Traffic Act, or any marking, notice or sign displayed or made in terms of this By-Law;

- (p) may not carry on business, or take up a position, or place his or her Property on portion of a Sidewalk or Public Place, in contravention of a notice or sign erected or displayed by the Council for the purposes of this By-Law;
- (q) may not, other than in a refuse receptacle approved or supplied by the Council, accumulate, dump, store, or deposit, or cause or permit to be accumulated, dumped, stored or deposited, any Litter on any land or premises or any Public Road or Public Place or on any public property;
- (r) may not place, on a Public Road or Public Place, such of his or her Property that not capable of being easily removed to a storage place away from such Public Road or Public Place, at the end of the day's business;
- (s) must, on concluding business for the day, remove his or her Property, except a structure permitted by the Council, to a place which is not part of a Public Road or Public Place;
- (t) may not store his or her Property in a manhole, storm water drain, public toilet, shelter or in a tree; and,
- (u) may not carry on Informal Trading in a place or area in contravention of any prohibition or restriction approved by the Council in terms of section 6A(2) of the Act.

11. Removal and Impoundment

- (1) An Authorised Official may remove and impound any Property of an Informal Trader which -
 - (a) he or she reasonably suspects is being used or Which Is intended to be used or has been used for or in connection with Informal Trading; and
 - (b) is found at a place where Informal Trading is restricted or prohibited.
- (2) The removal and impoundment of Property in terms of subsection (1) may be effected irrespective of whether or not such Property is in the possession or under the control of any third party at the time.
- (3) Any Authorised Official acting in terms of subsection (1) must except where Goods have been left or abandoned, issue to the person carrying on for Informal Trading, a receipt any Property so removed and impounded, which receipt must -
 - (a) itemise in detail the Property to be removed and impounded;
 - (b) provide the address where the impounded Property will be kept and the period of such impoundment;
 - (c) state the terms and conditions for the release of the impounded Property;
 - (d) state the Impoundment Costs to be paid by the Informal Trader concerned;

- (e) state the terms and conditions relating to the sale of unclaimed Property by public auction; and
 - (f) provide the name and address of a municipal official to whom any representation regarding the impoundment may be made and the date and time by which this must be done.
- (4) If any Property about to be impounded is attached to any immovable Property or a structure and such Property or structure is under the apparent control of a person present thereat, then any Authorised Official may order such person to remove the Property and if such person refuses or fails to comply then he or she shall be guilty of an offence.
- (5) When any person fails to comply with an order to remove the Property referred to in subsection (4), any Authorised Official may take such steps as may be necessary to remove such Property.

12. Vicarious liability of persons carrying on Informal Trading

- (1) When an employee or agent of an Informal Trader contravenes a provision of this By-Law, the Informal Trader shall be deemed to have committed such contravention unless such Informal Trader satisfies the court that he or she took reasonable steps to prevent such contravention.
- (2) The fact that the Informal Trader issued instructions to the employee or agent, prohibiting such contravention, shall not in itself constitute sufficient proof of such reasonable steps.

13. Offences and penalties

- (1) Any person who -
- (a) contravenes or fails to comply with any provision of this By-Law;
 - (b) fails to comply with any notice issued in terms of this By-Law;
 - (c) fails to comply with any lawful instruction given in terms of this By-Law; or
 - (d) who obstructs or hinders any authorised representative in the execution of his or her duties under this By-Law.,

is guilty of an offence and liable on conviction to a fine not exceeding R500 or, in default of payment, to imprisonment for a period not exceeding 3 (three) months and in the case of a continuing offence, to a further fine not exceeding R10 or, in default of payment, to imprisonment not exceeding one day, for every day during the continuation of such offence, after written notice has been issued by the Council and served on the person concerned, requesting the discontinuation of such offence.

14. Regulations

- (1) The Council may make regulations regarding -
 - (a) the declaration of any place to be an area in which Informal Trading is restricted, prohibited and the prescription or making of signs, markings or other devices, as contemplated in terms of section 9;
 - (b) the setting apart and demarcation of stands or areas for the purposes of street trading and the extension, reduction or disestablishment thereof, as contemplated in terms of section 10;
 - (c)
 - (i) the disposal of any Property which has been removed and impounded, contemplated in terms of section 11; and
 - (ii) the liability of any person for any reasonable expenses incurred in connection with such removal, impoundment and disposal;
 - (d)
 - (i) the prescription of penalties for the offences contemplated in terms of section 13; and
 - (ii) the amendment of such penalties from time to time;
 - (e) any matter which may be prescribed in terms of this By-Law and any matter which may facilitate the application of this By-Law.
- (2)
 - (a) The Council shall, not less than 1 (one) month before promulgating a regulation in terms of subsection [1], cause a draft of the regulation to be communicated to the local community and to be made public in terms of sections 21 and 21A of the Local Government Municipal Systems Act, 2000 [Act No. 32 of 2000], together with a notice declaring the intention of the Council to issue such a regulation and inviting comments or representation.
 - (b) If the Council decides to alter the draft regulation as a result of comments or representations received pursuant to such invitation, then it shall not be necessary to communicate and make public the alteration before the amended draft is promulgated as a regulation.

15. Adoption And Implementation Of Informal Trade Policy

The Council has adopted and implemented an Informal Trading Policy consistent with the Act and the Constitution.

16. Repeal of By-Laws

Any by-laws promulgated by the Council or any erstwhile municipal council now comprising an administrative unit of the Council and pertaining to any matter regulated in this By-Law shall be repealed from the date of promulgation of this By-Law.

17. Short title

This By-Law is called the Informal Trading By-laws, 2009 and takes effect on a date determined by the Council by proclamation In the Provincial Gazette.