

**PROVINCIAL NOTICE**

**[NO. 190 OF 2011]**

**NOTICE IN TERMS OF SECTION 14(2)(a)(i) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000:  
PUBLICATION: STANDARD FRESH PRODUCE MARKETS BY-LAW**

I, M.G Qabathe, Member of the Executive Council responsible for Cooperative Governance, Traditional Affairs and Human Settlement in the Free State Province, after consulting the Minister of Cooperative Governance and Traditional Affairs and the South African Local Government Association: Free State, do hereby in terms of section 14(2)(a)(i) of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), make standard by-laws as set out in the Schedule.

**SCHEDULE**

**FRESH PRODUCE MARKETS BY-LAW**

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## CHAPTER 1

### 1. Definitions

- In these By-laws, any word or expression which has been defined in the Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992), has that meaning and, unless the context otherwise indicates -

**"Act"** means Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992);

**"Administrative Tribunal"** means any administrative tribunal charged by law or delegation of the Council to resolve disputes in terms of this by-law.

**"approved"** means approved by the Council;

**"article"** means any produce, goods, object or thing brought onto the market for any purpose whatsoever,

**"Buyer"** means any person entering the precincts of the market site for the purpose of buying any article on the market or any person who has concluded a direct sale, a direct purchase or a private treaty sale in terms of this by-law;

**"Buyer's Card"** means a card referred to in section 30 (1) issued to a buyer for the purposes of enabling such buyer to purchase produce on the market;

**"Consignment"** means any quantity of produce entrusted to the Council or a market agent for sale on behalf of any person;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

**"Container"** means any box, carton, pallet, tray, pocket, package or other receptacle of a shape and size approved by the Council;

**"Council"** means

  - the Local Municipality of .....established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), exercising its legislative and executive authority through its municipal Council;
  - its successor in title;
  - 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); or
  - a service provider fulfilling a responsibility under these by-laws, assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) or any other law, as the case may be.

**"Direct sale"** means any sale of produce concluded by a market agent between a vendor and a buyer, which is in accordance with this by-law, but in respect of which delivery of produce is made directly between vendor and the buyer, which sale is recorded in Council's official trading system without the produce concerned arriving at or being placed on the market site;

**"Direct purchase"** means the sale of produce concluded between a vendor and a buyer which is in accordance with this by-law without the sale being concluded by a market agent and which sale goes through Council's official trading system on the market and takes place on the market site;

**"Loading Bay"** means any area on the market site demarcated by the Council as a "loading bay" with signs and markings laid down under the regulations made under the Road Traffic Act, 1989 (Act No. 29 of 1989);

**"Market"** means Council's National Fresh Produce Market established on the area known as ..... and includes all land, buildings, plat-forms and other property within the said area, used either wholly or partially, directly or

indirectly for the purpose of conducting the market; or any other market established by the Council within its area of jurisdiction;

**"Market Agent"** means a fresh produce agent as defined in the Act, or someone who facilitates sales of any produce for the acquisition of gain for his or her own account or in a partnership or who, on behalf of any other person, buys or sells any produce on the market or negotiates in connection therewith or canvasses or undertakes or offers to canvass to a buyer or vendor therefore, or who concludes a direct sale, direct purchase or private treaty sale;

**"Market dues"** means all monies due and owing to the Council by any party to any market transaction in terms of this by-law read with the market tariffs;

**"Market tariffs"** means the tariffs determined by the Council from time to time;

**"Nuisance"** means any act, omission or conduct which is offensive to any person or which materially interferes with the orderly conduct of the market;

**"Private Treaty Sale"** means a sale negotiated and concluded between a market agent and a buyer which is recorded in Council's official trading system;

**"Procurement"** means the distribution of information with a view to gather, store, or organise the movement of or the handling of produce;

**"Produce"** means any kind of agricultural or horticultural produce, or commodity as approved by Council from time to time;

**"Produce entry document"** means a document issued to a seller by the Council prior to the entry of the vendor into the market which must contain such information as the Council may determine;

**"Sales docket"** means a document issued by the Council containing the information set out in section 30 (5);

**"Salesperson"** means a person in the employ of a market agent, who acts on behalf of such market agent in any transaction on a fresh produce market or who concludes a direct sale, direct purchase or private treaty sale and is duly authorised by the Council to be employed as a salesperson on that market and who is in possession of a valid permit issued by the Council;

**"Salesperson's Permit"** means the document issued by the Council authorising a salesperson, employed by a market agent, to operate on a fresh produce market in a specific sales section;

**"Unit"** means the quantity of any produce which forms the basis upon which the price of such produce is calculated, except where the produce is contained in an unbroken container, in which case such produce, as so contained, must constitute a unit;

**"Vendor"** means the owner of produce consigned to or brought onto a produce market for sale, or any person bringing any article onto the market for sale or any other purpose, either for himself or for any other person through a market agent, or any other person on whose behalf a market agent has concluded a direct sale, direct purchase or private treaty sale.

**"Wholesaler"** means a person on the market site who, in terms of a valid contract with the Council, has a right to procure or buy produce, be involved in a direct sale or provide produce to other vendors within an approved designated facility and within Council's official trading system.

## CHAPTER 2

### Applicability of By-Law

2. This by-law is applicable on all markets established, controlled or managed by the Council within its jurisdiction.

## CHAPTER 3

### General Regulations on Market Site

#### Business Hours

3. The market must be opened on such days and during such hours as the Council may from time to time determine.

#### Vehicles and Security

4. (1) The Council must control and regulate the volume and movement of vehicles entering the market or within the precincts of the market by way of written or oral instructions.  
(2) The Council is empowered to set aside parking spaces on the market from time to time and regulate the use of such parking spaces.  
(3) The Council must set aside loading bays to cater for the loading and off-loading of goods.  
(4) The Council may forbid any vehicle or any class of vehicle from entering or being on the market.  
(5) The Council or its authorised representative or any Peace Officer may on the market, without warrant, search any vehicle or receptacle of whatever nature and seize any article in respect of which any offence has been, or on reasonable grounds, is suspected to have been committed.

### **Conduct and Control**

5. The conduct of the market is under the control of the Market Master in accordance with all relevant laws and resolutions of the Council, and all persons on the market must obey his or her lawful instructions and all such relevant laws and resolutions, including the provisions of these by-laws.

### **General Conduct of Persons on the Market Site**

6. (1) The Council must take all reasonable steps as may be necessary to ensure the safety and health of all persons on the market and an appropriate environment for the conduct of a fresh produce market and to this end must control and regulate the conduct of persons entering and upon the market site by way of written or oral instructions, directives or policies as amended from time to time.
- (2) No person must enter any part of the market without the permission of the Council subject to such conditions as it may impose, and no child under the age of 16 years must at any time be admitted to any part of the market except when under the direct supervision of an adult who will be responsible and accountable for such minor.

### **Registration of Porters or Carriers**

7. (1) No person must ply for hire as a porter or carrier on the market, unless in possession of a permit issued by the Market Master. Such a permit is valid for one week and may be issued to persons approved by the Market Master upon payment of a charge determined in terms of the Act.
- (2) Every person plying for hire as a porter or carrier on the market must be in possession of a permit as mentioned in subsection (1) by the Market Master.
- (3) No porter or carrier on the market must ply or canvass for hire by shouting or by persistently following a buyer or prospective buyer or fail to keep his or her person and clothing in a clean and tidy condition to the satisfaction of the Market Master.
- (4) No porter or carrier on the market must, at any time while he or she is not engaged or plying for hire be upon any portion of the market other than an enclosure or area set aside by the Market Master for such purpose.
- (5) Any porter or carrier contravening subsections (1) to (4) inclusive must be ordered off the market by the Market Master who may also cancel his or her permit, and no refund of any charge paid by such person must be made in such event.

### **Market Sales**

8. (1) The Council must take all reasonable steps as may be necessary -
  - (a) to ensure that the business conducted on the commission floor is transacted in accordance with the laws relating to fresh produce markets.
  - (b) to ensure that all disputes relating to market transactions are resolved as expeditiously as possible.
- (2) The Council may -
  - (a) satisfy itself in such manner as it may determine that a consignment is truly represented by any sample displayed or offered for sale on the market;
  - (b) inspect any goods brought onto the market site;
  - (c) inspect any goods purchased on the market whilst such goods are on the market site;
  - (d) impound any goods which is the subject of any, dispute on the market site until such time as such dispute is resolved.
- (3) The Council may by reasonable notice on a notice board or otherwise forbid the sale of any item on the market;
- (4) If the Council reasonably suspects that any articles submitted for sale on the market are stolen property, it must refuse to allow such articles to be offered for sale or to permit them to be sold, and it must, if it so suspects only after the sale, retain the proceeds of such sale until it has been satisfied as to the ownership of such articles.
- (5) The Council may at the cost of the owner impound, reject or decline to accept any article which in its opinion is offensive, diseased, unsound, unwholesome or unfit for consumption by human beings or animals, or is contained in a container likely to contaminate it or any other article with which such a container may come into contact.

- (6) The Council may by reasonable notice on a notice board or otherwise prohibit or prescribe the use of certain containers for different classes of articles.
- (7) The Council may refuse to release any article if it has reason to believe that either a buyer, vendor, market agent or employee of a market agent has failed to comply with any condition of sale imposed by the Council or this by-law.
- (8) The Council may issue such internal directives regarding sales or purchases as it may deem necessary.

### **Market Agents**

- 9. The Council must keep a register of all market agents in which is recorded all details of the ownership and the directorate of each market agent and of all persons employed by such market agent.

### **Information**

- 10. (1) The Council may demand any information, for statistical or any other lawful purpose, from any person relating to any aspect of sales on the market.
- (2) The Council may post internal managerial directives relating to the market upon a notice board in a prominent position on the market site and such posting must be deemed to be sufficient notice of any such matter to all persons concerned.

### **Monies and dues**

- 11. (1) The Council may demand, sue for and recover any amount due to or due by any person on behalf of whom or to whom any produce has been sold. If such a person fails to comply with a demand so made, the Council may set off such amount against any monies in its possession or under its control belonging to such a person.
- (2) If the Council has reason to believe that if monies in its possession are paid out to any person other than the person to whom they are lawfully due, or will not reach the person entitled to them, it may withhold payment of such monies until it is satisfied that they will reach the person entitled to them, or direct that they be paid directly to the person so entitled in a manner determined by the Council.
- (3) The Council is empowered to set off any outstanding debts owed to it against any monies in its possession belonging to the debtor.
- (4) No liability must devolve on the Council for any action taken in good faith in terms of this section.
- (5) Any person operating or trading on the market must pay to the Council such market dues as prescribed in the applicable market tariffs determined by Council from time to time.

### **Disputes**

- 12. In the event of any dispute arising on the market site, the Council may impound and hold as sequester any property on the market belonging to any party to the dispute, of a value it considers to be sufficient to satisfy the claim of any other party, and may hold such property until such time as the dispute has been determined by the Council or a court of law,

### **Sequestration of Property**

- 13. (1) Any article -
  - (a) left on the market site which is not claimed within 24 hours by the person entitled thereto;
  - (b) already sold but which remains behind at the time of the closing of sales on any day, or
  - (c) impounded by the Council in terms of subsection 8 (4), 8 (5) or 12 must be sequestered to the Council and the Council may:-
    - (i) sell the articles referred to in subsection (1) (a) forthwith;
    - (ii) re-sell the articles referred to in subsection (1) (b) on the following day, or
    - (iii) sell the articles referred to in section 12 on the determination of the dispute.

### **Market Management Board**

- 14. (1) The Council may appoint a Market Management Board in terms of the Council's Delegation of Operation and Decision Making Powers as amended by the Council from time to time or such other document issued by the Council.
- (2) The Market Management Board must have an advisory function and must assist the Council in resolving disputes relating to the market and must provide the Council with proposals regarding internal managerial, financial and operational matters on request.

- (3) The Constitution and the functions of the Market Management Board are those contained in Council's Delegation of Operation and Decision-making Powers.

#### CHAPTER 4

##### The Business of Market Agents and their Sales Personnel

###### Register of Market Agents

15. (1) Market agents are entitled to operate on the market after being approved by Council according to the procedure which is in place at the time.
- (2) No person must carry on the trade or business of a market agent on the market unless he or she is in possession of a valid market agent's licence.
- (3) Every market agent must, prior to any change in directorship, ownership or change of personnel, obtain the written approval of the Council.
- (4) No market agent must be involved in or trade in any other agency registered with the Council or trade in or be involved in any sub-agencies.
- (5) Every market agent so applying must satisfy the Council that -
- (a) he or she is a fit and proper person to carry on the trade or business as a market agent; and
- (b) he or she is qualified to conduct the business of a market agent;
- (6) The Council is empowered to refuse to issue, suspend or renew a licence if the market agent concerned -
- (a) has an interest, either directly or indirectly, or involved in any other business established for the production, sale, purchase or dealing in. produce or articles of any kind usually sold on the market; or
- (b) has been found guilty of the contravention of any law, by-law or regulation relating to the market;
- (c) is not a fit or proper person to be trading on or employed at the market;
- (d) has acted in any way prejudicial to the interest of the market.
- (7) Refusal by the Council to issue, suspend or renew a licence must not debar an applicant from again applying for a licence within a reasonable time from his application being refused.
- (8) Every licence must be valid from its date of issue until cancelled or withdrawn by the Council.

###### Permits

16. (1) No salesperson must be employed as a salesperson until a valid salesperson's permit has been issued by the Council.
- (2) All applications for permits must be submitted to the Council on the prescribed form.
- (3) Every salesperson so applying must satisfy the Council that -
- (a) he or she is a fit and proper person to carry on the trade or business of a salesperson;
- (b) he or she is legally qualified to conduct the business of a salesperson;
- (4) The Council is empowered to refuse to issue, suspend or renew a permit if the salesperson concerned -
- (a) has an interest, either directly or indirectly, or involved in any other business establishment for the production, sale, purchase or dealing in. produce or articles of any kind usually sold on the market; or
- (b) have been found guilty of the contravention of any law, by-law or regulation relating to the market;
- (c) is not a fit or proper person to be trading on or employed at the market; or
- (d) has acted in any way prejudicial to the interest of the market.
- (5) Any refusal by the Council to issue, suspend or renew a permit, must not debar an applicant from again applying for a permit within a reason time from his application being refused.
- (6) Every permit must be valid from its date of issue until cancelled or withdrawn by the Council.

###### Employees

17. (1) Every market agent must be responsible for the conduct of all persons in his or her employ, and is personally liable for any damage done to any property on the market by himself or herself or any of his or her employees.
- (2) No market agent may -
- (a) fail to terminate the services of any employee convicted of a criminal offence of any law, by-law or regulation relating to the market, or
- (b) engage or re-engage within the market any person whose services have been terminated in terms of paragraph (a).

- (3) Every employee of any person operating on the market site must be in possession of a valid permit issued by Council in terms of internal directives issued by Council from time to time.

### **Business Principles**

18. (1) No market agent must conduct his or her business other than in accordance with the provisions of the Act, the Rules made under section 22(1) of the Act or this by-law.
- (2) No market agent must, when conducting private treaty sales, show preference to any person in any way whatsoever.
- (3) No market agent or employee of a market agent must purchase produce on the market except for private use and at a price not lower than the price at which similar produce was sold on the market on the same day.

## **CHAPTER 5**

### **General Practices on the Market Site**

#### **Delivery Notes and Waybills**

19. (1) Every person bringing or causing to be brought onto the market any produce must, immediately on its entry on the market premises, register such produce with the Council and the relevant part to whom the article is consigned.
- (2) The Council may obtain from the transporting organisation a copy of every delivery, note or waybill issued by the organisation and any other particulars required by him or her in respect of every article delivered to the market by the said organisation.
- (3) The Council must issue a goods received note based on the waybill or delivery note presented by the vendor or transporter showing -
  - (a) the date of arrival;
  - (b) the full name and address of the vendor,
  - (c) the description of the article;
  - (d) the description of the container.
  - (e) the mass or quantity;
  - (f) the variety or quality;
  - (g) the name or code mark of the market agent or party to whom such article is sent;
  - (h) the registration number of the vehicle, if any, and
  - (i) any other particulars that may from time to time be required by the Council.and every vendor is obliged to furnish the council with the full and correct information.

#### **Containers**

20. (1) Every container must have the name and address of the consignor and market agent clearly and legibly marked in capital letters on such container or on a label securely attached to it.
- (2) All other names, addresses or marks, except the name of the consignee, must be obliterated.

#### **Passage of Risk**

21. Every article brought onto the market must at all times be at the sole risk of the market agent or party to whom it is consigned until it is sold, where after the risk must pass to the new owner.

#### **The Vendor**

22. (1) Any vendor who wishes to remove from the market any article brought onto the market site by him or her must first obtain the prior written consent of the Council before removing such article.
- (2) No person must bring onto the market or display, any produce which is packed in such a manner that the produce at the top or sides of the container is of better quality or larger size than the produce in any other part of the container.
- (3) No person other than a person who is a registered market agent may be a vendor on the market sales floors.

#### **Implied Conditions of Agency**

23. Every market agent must account promptly, correctly and in full to the vendor for the proceeds of any sale after receiving payment from the Council and must pay the vendor the amount owing to him or her after deducting from such monies or any amount which he or she is legally entitled to do.

## CHAPTER 6

### Sales Practice

#### General

24. (1) No-one must canvass on the sales floor or anywhere on the market, directly or indirectly or by any means whatsoever, with a view to secure direct dealings with potential buyers.
- (2) No articles must be sold except according to quality, mass, number or otherwise required by law or as determined by the Council.

#### Direct Sales

25. (1) No person must conduct a direct sale unless -
- (a) he or she has obtained prior written approval from the Council.
  - (b) such details of such sale and such relevant documents and information required for consignment auditing purposes in relation to such sale have been furnished to the Council upon request:
- (2) Council may from time to time publish commodity lists of products which it deems fit to prohibit direct sales.

#### Direct Purchases

26. (1) No person must enter into any direct purchase arrangement with a vendor unless -
- (a) he or she has obtained prior written approval from the Council;
  - (b) the full details of such purchase are declared at the entry gates and the original copy of the waybill(s) is handed in at such control gates;
  - (c) such details of such purchase and such relevant documents and information required for consignment auditing purposes in relation to such purchase have been furnished to the Council upon request;
- (2) No delivery of a declared direct purchase may be received on any part of the market except at the approved trading facility allocated to the recipient.
- (3) No produce received as a direct purchase must be stored in the Council's own cold-storage facilities or market agency owned cold-storage facilities unless specific prior written approval from the Council has been acquired.
- (4) Council may from time to time publish commodity lists of products which it deems fit to prohibit for direct purchases.

#### Procurement

27. (1) No person must co-ordinate, store, serve as broker, trade by computer, or negotiate the movement, storage, trading, assembling or procuring of any produce or consignment thereof on or off the market sales floor or market site, without having obtained prior written approval from the Council.
- (2) No person must in whatsoever way serve as a middle-man, communicator, exporter or importer unless prior approval has been granted by the Council.

#### Market Agents

28. (1) It is the responsibility of the market agent concerned to ensure that articles which are required to be sold by mass are arranged in units, the mass of which must comply with any legal requirements, before such articles are displayed for sale, offered for sale or sold and such mass must be clearly and legibly marked on such articles and their containers.
- (2) No articles must be displayed for sale, offered for sale or sold unless the container is marked in the manner described in section 20.
- (3) No article required by law to be graded, must be offered for sale or sold on the market unless it has been submitted by the market agent concerned for inspection and has been inspected as prescribed by law and the grade assigned to it as a result of such inspection has been clearly marked on it by such market agent
- (4) No article required by law to be offered for sale or sold by mass, or to be packed, marked or graded in a prescribed manner must be offered for sale or sold or removed from the market agent unless it complies in every respect with the requirements of such law, provided that the Council may, in its discretion, direct that any article be sold if it deems it expedient to do so.
- (5) All sales by market agents must be conducted by private treaty, unless otherwise directed by the Council.



- (6) No market agent must offer for sale or sell any article by private treaty unless he or she is in a position to deliver the article concerned as soon as the purchase price has been paid by the buyer, except in the case of a direct sale when delivery may be effected directly between buyer and vendor.
- (7) No market agent must conclude a direct sale between a vendor and a buyer and fail to obtain prior authority from the Council, omit or neglect to advise the Council in advance of the details of such direct sale.

#### **Wholesalers**

29. (1) No wholesaler or his or her personnel may trade on the sale floors or any other area other than the area designated to him by the Council.
- (2) No wholesaler or his or her personnel may be involved in retail trading unless Council's prior written approval has been obtained.
- (3) No wholesaler or his or her personnel may introduce business practices that will result in such wholesaler or his or her personnel competing with the trade on the commission sales floor.

#### **Purchases and Payment**

30. (1) All buyers must obtain from the Council a buyer's card which must be issued by the Council in the prescribed manner.
- (2) In the case of all sales, whether by private treaty, direct sale or by public auction, the buyer must immediately upon a sale being concluded present his or her buyer's card to the market agent concerned who must record the details of such sale in the prescribed manner.
- (3) No market agent or his or her employees must receive or handle cash in respect of any purchase on the trading floor except as prescribed by internal directives issued by Council from time to time.
- (4) No buyer may remove any produce from the market site unless he or she is in possession of a valid sales docket
- (5) Every sales docket referred to in subsection (4) must be clearly and legibly completed and must contain the following information -
  - (a) the date of transaction;
  - (b) the market agent's name;
  - (c) in the case of a credit buyer, his or her full code, name and number;
  - (d) a description of the article sold;
  - (e) a description of the type of container used;
  - (f) the quality of the article sold;
  - (g) the mass, quantity or number of units, as the case may be of the article sold;
  - (h) the price per unit;
  - (i) the full purchase price; and
  - (j) such other information as may be required by the Council from time to time.
- (6) In the event of a direct sale, the market agent or vendor must for the purpose of obtaining the consent of the Council, provide the Council with the purchase price relating to such a sale, a sales docket and a delivery note showing -
  - (a) the date;
  - (b) the name, code and address of the vendor;
  - (c) the name and address of the buyer;
  - (d) the commodity;
  - (e) the quantity and quality of the article sold;
  - (f) the price per unit; and
  - (g) any other information that the Council must reasonably require in respect of such sale.

#### **Implied Conditions of Sale**

31. The market agent is responsible for delivering to the buyer the correct quantity, mass, quality, grade and variety of the purchased article in its proper container.

#### **Accounting**

- 32 (1) The Council must keep a correct account of all articles sold and monies handled.

- (2) All accounts of the Council and all books, records and documentation relating thereto must at all times be open to inspection by any person as may from time to time be appointed by the Council or the Auditor-General to carry out such inspection.
- (3) The Council must pay the proceeds of the sale of any article consigned to a market agent and sold on the market, or sold by means of a direct sale, to such market agent's Trust account after deducting there from the market dues, levies, duties or charges payable in respect of such sale: Provided that in the case of a direct sale the Council may withhold such proceeds pending written certification by the market agent that the sale has been completed and delivery effected to the satisfaction of both vendor and buyer.

## CHAPTER 7

### Procedures

33. (1) All persons must -
- (a) on arrival, register any article brought to the market for sale thereon with the Council in the prescribed manner;
  - (b) pay, at a time specified by the Council on the produce entry document an ad valorem tariff of the value of the produce brought onto the market as prescribed by the market tariffs and assessed by the Council;
  - (c) refrain from conducting business in any manner otherwise than in accordance with this by-law;
  - (d) keep any vehicle, basket or container brought onto the market site clean and tidy to the satisfaction of the Council;
  - (e) refrain from selling, offering, introducing, hawking or carrying about for sale any produce on the market without the prior permission of the Council;
  - (f) refrain from placing or causing to be placed any objectionable matter in any refuse receptacle;
  - (g) only enter the market if he or she has lawful business thereon.
- (2) Without the scope of the powers vested in the Council being limited in any way, no person must, on the market -
- (a) smoke in any part where a notice prohibiting smoking is displayed;
  - (b) light a fire, save at such times and in such places as have been authorised by the Council;
  - (c) stand, sit or lie upon or against any produce or container;
  - (d) throw anything at any person or object;
  - (e) without lawful reason tamper with or remove or cause to be removed any produce, container or pallet exposed for sale, or any label on such produce or container,
  - (f) without the written permission of the Council erect any fence or building or convert existing buildings or erect partitions or install wiring or electrical installations or fittings or extend existing wiring or electrical installations or fittings or make any other changes of a like to such premises on the market;
  - (g) introduce or cause or allow to be introduced into or enter any drain, gully or storm water drain any matter likely to cause blockage or damage any sewerage, oil, foul water or other objectionable substance;
  - (h) without the permission of the Council wash, sort, grade or clean fruit, vegetables, any vehicle or other article;
  - (i) interfere with or molest any person or interfere with the proper carrying on of any business;
  - (j) save with the permission of the Council enter or remain or cause any article, animal or other thing to enter or remain on any pan thereof on days or at times when the market is closed;
  - (k) fail or refuse to depart or to remove any vehicle, animal or other thing when lawfully instructed by the Council to do so;
  - (l) spit, loiter, use any threatening, obscene, abusive, violent, offensive or disgusting language, make any loud or unseemly noise or cause a disturbance;
  - (m) touch, taste, handle or move any produce exposed for sale in such a way as to render it liable to contamination;
  - (n) wilfully damage or deface any property;
  - (o) discard or deposit in any place other than receptacles provided for the purpose of any fruit-peel, vegetable leaves or other refuse of any kind whatsoever;
  - (p) drive, propel, or ride any vehicle, trolley, handcart or mechanical handling equipment in such a way as to endanger persons or damage property; or
  - (q) disobey any signs or directions within its roadways.

- (3) No person must offer for sale or sell any produce on the market before the commencement of sales or after the closing of sales.
- (4) No person must -
  - (a) take any vehicle onto the market site without first obtaining the permission of the Council -
  - (b) neglect or refuse to place any vehicle under his or her control in the position assigned to such vehicle by the Council or to comply with any lawful direction given to him or her by the Council for the purposes of section 4;
  - (c) being in charge of any vehicle, park such vehicle in any place within the market site other than in a space set aside in terms of section 4 (3) hereof, unless he or she is otherwise directed by the Council;
  - (d) take or cause or permit to be taken onto the market site any class of vehicle forbidden by the Council in terms of section 4 (4);
- (5) No person in charge of any vehicle must -
  - (a) except by reason of a cause beyond his or her control, allow such a vehicle to remain stationary in a loading bay for any purpose other than for the loading or off-loading of goods;
  - (b) permit any vehicle to remain in a loading bay for a period longer than is absolutely necessary for the loading or off-loading of goods; or
  - (c) drive, propel or ride any vehicle within the precincts of the market in such a way as to endanger persons or property.
- (6) No person must -
  - (a) place any article or thing anywhere on the market site so as to cause inconvenience or obstruction or as to prevent the proper sweeping, washing or cleaning of the market site;
  - (b) ignore an instruction from the Council to immediately remove any article or thing from the market site or from one part of the market site to another when instructed to do so by the Council; or
  - (c) install any article without the prior consent of the Council, subject to the provisions of this by-law, before storing any article on the market site.
- (7) No person must -
  - (a) bring or convey any intoxicating liquor onto the market site, or have intoxicating liquor in his or her possession whilst on the market site, or enter or remain upon the market site while under the influence of intoxicating liquor without the prior consent of the Council;
  - (b) damage, ruin or tamper with any article brought to the market, or any building or property belonging to the Council on the market site;
  - (c) bring onto the market site any refuse, garbage or vegetable matter for the purpose of discarding such refuse, garbage or vegetable matter within the precincts of the market site;
  - (d) cook food or make tea or any other beverage in any part of the market site other than in such places as may have been set aside for the purpose: Provided that the Council may allow tea or any other beverage to be made in premises set aside for market business subject to such premises being kept neat and clean to the satisfaction of the Council;
  - (e) be on the market site when suffering from any contagious or infectious disease;
  - (f) take onto the market site any pets.
- (8) All persons offering for hire as a porter or earner on the Market site must -
  - (a) be in possession of a porter's permit referred to in section 5;
  - (b) wear such identification as may be directed by the Council.
- (9) No porter or carrier on the market site must;
  - (a) at any time while he or she is not engaged or plying for hire, be upon any portion of the market other than an enclosure or other area set aside by the Council for such purpose;
  - (b) ply or canvass for hire by shouting or by persistently following a purchaser or prospective purchaser, or
  - (c) have his or her person and clothing in an untidy, unhygienic or unseemly condition.
- (10) No person must sell, expose or offer for sale -
  - (a) any item precluded for sale by the Council in terms of section 8 (3); or
  - (b) any articles in containers which fail to comply with the prescriptions or specifications of the Council as prescribed under section 8 (6).
- (11) No person, other than the Council must organise or conduct or attempt to organise or conduct any auction sale on the market site.

- (12) No Council official must directly or indirectly be allowed to trade or purchase articles on the market, either for his or her own account or for commission, except such articles as he or she bona fide requires for his or her own private consumption, which articles must not be given to such Council official as a gift or for any price below the normal market value of such articles as traded in the day in question.
- (13) Every market agent must -
- (a) supply to his or her employees such protective clothing as may be required by law and prescribed by the Council;
  - (b) ensure that the clothing referred to in paragraph (a) is -
    - (i) distinctly marked as prescribed by the Council;
    - (ii) at all times kept clean and in good repair, to the satisfaction of the Council.
  - (c) ensure that his or her employees on the market are wearing clothing of the kind prescribed in paragraph (a);
  - (d) remove and effectively separate from any produce in his or her custody for sale on the market, any article which at any time is or shows signs of being deteriorated or damaged; or
- (14) Any person concerned with marketing or the handling of produce -
- (a) must wear clothing of the kind referred to in subsection (13 (a)) whilst performing their duties when required to do so by the Council;
  - (b) must undergo an X-ray or other medical examination for tuberculosis at his or her own expense whenever it is deemed necessary by the Council; and
  - (c) must submit the results of any examination referred to in subsection (b) to the Council.
- (15) All vendors must ensure that their produce is free from pesticide and other chemical residue.
- (16) All vendors must ensure that containers must indicate whether produce has been radiated or chemically treated.

## CHAPTER 8

### General

34. (1) The Council is not liable for any loss, damage or injury to any property or any injury or death of any person on the market, howsoever arising, except where such loss, damage, injury or death is proved to be due to the wilful misconduct or gross negligence of the Council or of its employees acting in the course and scope of their employment.
- (2) Any person committing a breach of this by-law must pay to the Council the amount of the damage done, as well as the civil penalty imposed for the breach of the by-law concerned as prescribed in the Market Tariffs.
- (3) No claim referred to in section 13 must be recognised after the expiry of 90 days from the date of sale, and in such case all the proceeds of such sale must revert to the market as income.
- (4) Every person is presumed to know the provisions of this by-law and of every instruction of the Council published on the notice board on the market site.
- (5) A certificate issued by a duly authorised Council Official indicating the amount which any person owes to Council constitutes prima facie proof of such person's indebtedness to the Council as at the date of such certificate.

## CHAPTER 9

### Penalties

35. (1) Any person who -
- (a) contravenes any provisions of this by-law;
  - (b) contravenes any condition imposed upon the granting of any application, consent, approval, concession, relaxation, permit or authority in terms of this by-law;
  - (c) fails to comply with the terms of any notice served on him or her in terms of this by-law; or
  - (d) fails to comply with any lawful instruction of the Council,
- is guilty- of an offence and liable, upon conviction, to a maximum penalty of six months imprisonment or to a fine as prescribed for the offence under the Adjustments of Fines, Act, 1991 (Act No. 101 of 1991).
- (2) Failure to comply with the terms of any condition or notice referred to in subsections 35 (1) (b) or (c) constitutes a continuing offence and a person failing to comply with the terms of such condition or notice is guilty of a separate offence for each day during which he or she fails to comply with such terms.

## CHAPTER 10

**Determination of Market disputes**

- 36 (1) In the event of any dispute arising on the market site relating to the sale of any article on the market and not involving the Council as a party, or any direct sale, or any matter incidental thereto, the Council may decide the issue and, subject to an appeal to the Administrative Tribunal concerned, such decision is final and binding on the parties.
- (2) Subject to the provisions of Section 34 of the Constitution, in the event of any dispute arising on the market site, relating to the sale of any article on the market and involving the Council as a party, the Administrative Tribunal concerned, may decide the issue, and such decision is final and binding on the parties.

**Repeal**

37. Any by-laws relating to fresh produce markets adopted by the municipality or any municipality now comprising an administrative unit of the Council is repealed from the date of promulgation of these by-laws.

**Short title**

38. These By-laws are called the By-laws relating to Fresh Produce Markets, 2011.