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THE LOCAL AUTHORITIES ORDINANCE, 1996

THE CITY OF KUCHING NORTH (HAWKERS) BY-LAWS, 2005

(Made under sections 91 and 105(g))

In exercise of the powers conferred by sections 91 and 105(g) of the Local Authorities Ordinance, 1996 [*Cap. 20*], the City of Kuching North has, with the approval of the Yang di-Pertua Negeri, made the following By-laws:

Citation, commencement and application

1.—(1) These By-laws may be cited as the **City of Kuching North (Hawkers) By-laws, 2005**, and shall come into force on the 1st day of July, 2005.

(2) By-laws 4(3), 4(5) and 7 shall not apply to temporary hawkers.

Interpretation

2. In these By-laws—

“Commission” means the Commission of the City of Kuching North established under section 4 of the City of Kuching North Ordinance, 1988 [*Cap. 49*];

“goods” means wares and merchandise of any description and every article manufactured, sold or represented for use as food or drink for

human consumption, and includes plant, flower, confectionery, chewing substances, animal, wholesome meat, fish, poultry, eggs, vegetable and tobacco;

“hawker” means—

(a) a person who carries or takes about goods or merchandise for sale, not in pursuance of an invitation to call with, or of a previous order or request for those goods or merchandise; and

(b) includes a pedlar, and a person who exposes for sale goods or merchandise carried or taken about by that person, or solicits the custom of any other person;

“itinerant hawker” means any person who with or without vehicle goes from place to place to sell or to expose for sale goods of any kind;

“licensee” means a person licensed under these By-laws, and includes any person lawfully appointed or nominated under by-law 7 to take temporary charge of the business of the licensee;

“lock-up stall” means a stall constructed by the Commission or classified as such by the Commission;

“pitch” means any pitch delineated on the ground under by-law 10;

“public place” has the meaning assigned to it under the Local Authorities Ordinance, 1996 [*Cap. 20*], and includes any parking place, recreation and pleasure ground;

“stall” includes any lock-up stall, table, store, stool, stance, bench, basket, chair, kandar stick, wall shop-case, showboard of whatever nature or any other appurtenances whether portable or non-portable and whether on wheels or not on wheels, whereon or wherein goods of any kind are sold or exposed for sale in any private or public place;

“static hawker” means any person who sets up a stall in any premises or shops or in any private or public place, and sells or exposes for sale goods of any kind;

“temporary hawker” means any person who occasionally sets up a stall, and sells or exposes for sale goods of any kind in a pitch designated for such purpose under by-law 10;

“vehicle” includes any vehicle whether mechanically driven or otherwise, a barrow, cart, bicycle, tricycle, motorcycle, scooter, car, van, lorry, vessel, boat, raft or other conveyance adapted or used for the purpose of hawking.

Prohibition to hawk without licence

3.—(1) Except as provided in by-law 7, no person except one in respect of whom a licence has been issued under these By-laws shall hawk any goods or service.

(2) No licensee shall hawk goods or service of any kind, or in any area, that is not specified in his licence.

(3) The Commission may, from time to time, issue temporary permits, subject to such conditions as the Commission may deem fit, for the erection of stalls for the sale of goods of any kind at any place specified in such permits during the continuance of any temporary fair, fete, wayang, gala or other special occasion and notwithstanding anything in this by-law contained, it shall not be an offence to erect a stall for the sale of goods in accordance with any such permit.

Application for licence

4.—(1) Every application for a licence to act as a hawker shall be made in writing to the Commission in such form as the Commission may determine.

(2) Any person whose licence has been lost, stolen, destroyed or defaced may apply to the Commission for the issue of a duplicate licence.

(3) Where an application for a licence is granted, the Commission shall require the applicant to submit three passport-size photographs of the applicant which shall portray a recognizable likeness of the applicant.

(4) A licence shall be in such form as the Commission may determine.

(5) Every licence shall be in respect of a specified site or sites and in respect of itinerant hawker, the route or routes along which the licensee is licensed to hawk.

(6) Every licence issued under these By-laws, on payment of such fee as prescribed in the Schedule, shall—

(a) state on its face whether it is in an itinerant or a static or a temporary hawker licence;

(b) specify the name and address of the licensee;

(c) state the location in which and the hours during which the licensee is permitted to hawk;

(d) specify the period for which the licence shall be valid;

(e) specify the type of goods to be sold, or the service to be provided, by the licensee;

(f) specify the terms, conditions and restrictions as the Commission may think fit to impose;

(g) have fixed to it the photograph of the licensee and such other photographs as may be required by by-law 7; and

(h) specify such other particulars as the Commission may consider necessary.

(7) Every licence may, by order, be suspended, cancelled or revoked by the Commission without compensation if it is satisfied that—

(a) the licensee has assaulted, abused or harassed any officer of the Commission who is exercising his powers or performing his duties under these By-laws; or

(b) the licensee has breached any of the provisions of these By-laws or of any condition or restriction lawfully inserted in the licence:

Provided that no order shall be made under this paragraph unless the licensee has been given a reasonable opportunity of being heard.

(8) The Commission may at its discretion refuse to grant or renew any licence.

(9) Every person to whom a licence has been granted shall exhibit his licence at all times in some prominent place at his place of business or on the vehicle or stall and shall produce such licence if required to do so by any person authorized by the Commission.

(10) A licensee shall surrender his licence, upon its expiry, revocation, cancellation or suspension to the Commission.

(11) A licensee shall not transfer his licence to any other person without the prior approval in writing of the Commission and on payment of a fee as prescribed in the Schedule.

Restriction on issue of licence

5. A licence may not be issued to any person who—

(a) is under 18 years of age; or

(b) is already the holder of a valid hawking licence.

Size of stall, etc.

6. The size, material, specification of the stall must be in accordance with the standard and requirements approved by the Commission pertaining to these type of businesses.

Employment of assistant

7.—(1) No licensee shall employ, engage or utilize the services of an assistant, whether paid or otherwise, except with the written permission of the Commission.

(2) A licensee may, with the written permission of the Commission, nominate a person to take temporary charge of his stall or pitch:

Provided—

(a) that such permission shall only be granted if the Commission is satisfied that the licensee cannot personally operate the stall or pitch on account of absence or illness; and

(b) that no such permission shall be granted for a period in excess of three months.

(3) A photograph of any assistant to whom paragraph (1) applies and of any nominee to whom paragraph (2) applies shall be endorsed by an officer of the Commission authorized to that effect and shall be attached to the licence plate to be exhibited on the stall or pitch under by-law 4(9).

(4) A fee as prescribed in the Schedule shall be chargeable for the endorsement of the appointment of an assistant or a nominee in the licence.

Erection of canopy and installation of electrical equipment prohibited

8.—(1) A licensee shall not erect or use any canopy or covering for his stall or pitch without the approval in writing of the Commission which may be endorsed on the licence.

(2) No licensee shall install or connect any electrical appliances, electrical wiring, or other electrical equipment for the purposes of his trade unless he has previously obtained in writing the approval of the Commission.

(3) Every licensee shall ensure that any covering, appliance, wiring or equipment for which he has obtained approval under paragraph (1) or (2) does not constitute a danger or hazard to any person or property.

Prohibition

9.—(1) No hawker shall carry on his business—

(a) within 9 metres of a street junction;

(b) within 360 centimetres of a fire hydrant;

(c) on a stairway, back-lane, five-foot way or public pavement unless permitted in writing by the Commission.

(d) over a drain by placing any board, plank or other object to cover the same or in any other manner;

(e) outside the area in which the licensee is permitted to hawk unless his licence is endorsed by the Commission with the permission for him to do so; or

(f) in any area which the Commission has declared under by-law 10 to be restricted to hawkers of his class.

(2) No hawker shall carry on his business in such a manner as to obstruct or to interfere with the free flow of vehicular traffic and of the free movement of pedestrian.

(3) Every hawker shall comply with such verbal or written directions that may be given by the Commission or by any person authorized by the Commission with regard to the placing of his stall, vehicle or other appurtenances relating to his business.

(4) Every temporary hawker shall remove from his pitch or site, the stall, vehicle or other appurtenances relating to his business at the close of business each day or night, as the case may be, and shall ensure that the pitch or area is kept free of refuse, at all times.

Hawker permitted area

10.—(1) The Commission may, by notification published in the *Gazette*,—

(a) declare any street or any part of a public place under its control to be a hawker permitted area, and specify the class or classes of hawkers who may use such area; and

(b) declare any area to be restricted to any particular class or classes of hawkers.

(2) The Commission may from time to time cause fixed pitches to be set aside in any hawker permitted area for the use of holders of temporary hawker licence. Every such pitch shall be delineated by means of—

(a) continuous or intermittent lines painted on the ground; or

(b) such other means as may be determined by the Commission.

Handcart

11. The handcart used by itinerant hawker shall not exceed 180 centimetres in length and 90 centimetres in width and the cover or awning over it shall not extend more than 30 centimetres beyond any part of the handcart.

Vehicle

12.—(1) Where a vehicle is used by an itinerant hawker it shall be of such size or shape as may be approved by the Commission. In the case of motor vehicle, it shall have been registered with the Jabatan Pengangkutan Jalan. In the case of boat, it shall have been registered with the appropriate Government agency having jurisdiction over such category of boat.

(2) The Commission may require the licensee to paint his vehicle with such colour as may be determined by the Commission.

(3) The Commission may require the licensee to print or paint the routes and localities to which he has been permitted to sell his goods or to provide his service.

Medical examinations

13. Every hawker shall be subject to such medical examination as may be directed by the Commission.

Cleanliness

14. Every hawker shall maintain—

(a) his person or clothing in a state of cleanliness; and

(b) his stall or vehicle and other appurtenances relating to his business in a clean and sanitary condition and shall have it painted or repainted at such time as may be directed by the Commission.

Provision of refuse bins

15. Every hawker shall provide adequate refuse bins or receptacles as may be necessary for the reception of refuse.

Wet solid refuse

16. All putrefiable or wet solid refuse shall be placed in plastic bags or other suitable container before they are deposited in refuse bins.

Disposal of refuse

17. All refuse in the refuse bins shall be disposed of by the hawker in such manner as may be directed by the Commission.

Spilling of offensive matter

18. No hawker shall deposit, spill, scatter or throw or cause or permit to be deposited, spilled, scattered or thrown any blood, brine, waste liquid or other offensive matter into any drain, stream or on any other public place.

Fees

19. The fees payable under these By-laws shall be as prescribed in the Schedule.

Penalties

20.—(1) Any person who contravenes or fails to comply or commits an offence against any of these By-laws shall be punishable—

(a) on his first conviction for the offence, to a fine not exceeding one thousand ringgit; and

(b) on his second or any subsequent conviction for the offence, to a fine not exceeding three thousand ringgit or to imprisonment not exceeding six months or to both, and in the case of a continuing offence, to a further fine of one hundred ringgit for each day during which the offence has continued.

(2) Any person (whether a licensee or otherwise) who, for the purpose of obtaining any licence, permission, or approval under these By-laws, either for himself or any other person, makes any representation, whether oral or written, to the Commission or any employee or agent of the Commission being a representation which he knows to be false as to a material particular shall be guilty of an offence: Penalty, a fine not exceeding one thousand ringgit or imprisonment not exceeding six months or both.

Seizure

21.—(1) Any goods intended or exposed for sale together with their containers and any accompanying appliances and the stall or vehicle belonging to or used by a person not licensed to act as a hawker under these By-laws may be seized by any officer authorized in writing by the Commission and removed to and detained at such place as may be determined by the Commission at the risk of the owner.

(2) The Commission and its officers shall not be liable for any loss or damage to any goods, articles, stalls or vehicles so removed or detained by the Commission under this by-law.

(3) Any perishable goods seized under paragraph (1) may be disposed of in such manner as the Commission may determine.

Claims of seized goods

22.—(1) Any person having any claim to any of the goods, articles, stalls or vehicles that have been removed and detained under by-law 21 may claim the same from the Commission within a period of fourteen days from the date of seizure subject to such conditions as may be imposed by the

Commission and without prejudice to the liability of the person to any penalty under these By-laws the Commission may recover the cost of removal and storage as prescribed in the Schedule from the person in like manner as a debt:

Provided that in the event of there being no claim made to any of the goods, articles or stalls that have been seized, removed and detained within the specified period of fourteen days, the Commission may dispose of such goods, articles or stalls in such manner as the Commission may think fit:

And provided further that where any vehicle has been seized, removed and detained, such vehicle shall not be sold or disposed of without an order of the Magistrate's court.

(2) The Commission may conduct the auction of the said vehicle or goods therein in accordance with the auction procedure of the Commission and it shall be deemed to be sold upon the acceptance of the highest price by the Commission and upon payment of the bidding price by the successful bidder.

(3) The auction shall be conducted at the designated place as determined by the Commission.

(4) The proceeds of any sale or disposal of the goods, articles, stalls or vehicles shall be applied or used for the payment of costs of removal, detention work and surplus, if any, shall be refunded to the lawful owner.

(5) The particulars obtained from the relevant authorities relating to the ownership of the vehicle shall be deemed accurate and sufficient for the purpose of enforcing the provisions of these By-laws.

Amendment to the Kuching Municipal Council (Licensing of Miscellaneous Occupations) By-laws

23. The First Schedule to the Kuching Municipal Council (Licensing of Miscellaneous Occupations) By-laws [Vol. X, p. 93] is amended by deleting the following items:

	<i>First Column</i>	<i>Second Column</i>
	<i>Type of Licence</i>	<i>Per Quarter</i>
"Class A(1) Licence	— General Hawkers with barrows	\$40.00
Class A(2) Licence	— General Hawkers without barrows	20.00
Class B Licence	— Fixed stalls in compound	40.00
Class C Licence	— General Hawkers with motor vehicles	80.00"

Kuching Rural District Council (Hawkers) By-laws cease to apply

24. The Kuching Rural District Council (Hawkers) By-laws [Vol. XI, p. 751] shall cease to apply to areas of the Commission which were formerly under the jurisdiction of the Kuching Rural District Council.

SCHEDULE
FEEES

(By-laws 3(3), 4, 7(4), 19 and 22)

- | | |
|---|--|
| 1. Itinerant hawker's licence (by-law 4(6)) | |
| (a) with motor vehicle | RM 300.00 per annum |
| (b) with vehicle other than motor vehicle | 120.00 per annum |
| (c) without vehicle | 60.00 per annum |
| 2. Static hawker's licence (by-law 4(6)) | |
| (a) fixed stalls including food stalls or tables in shops or premises or in any private place but shall exclude the food stalls or tables in shops or premises licensed under the Kuching Municipal Council (Licensing of Miscellaneous Occupations) By-laws [Vol X, p. 93] | RM 240.00 per annum |
| (b) Street stall (including stalls in public places) | RM 240.00 per annum |
| 3. Temporary hawker's licence (by-law 4(6)) | |
| (a) Fresh food and jungle produce | RM20.00 per month per pitch; or RM2.00 per day or per night per pitch, whichever is applicable |
| (b) Merchandise other than fresh food and jungle produce | RM50.00 per month per pitch; or RM5.00 per day or per night per pitch, whichever is applicable |
| 4. Fee for temporary permit (by-law 3(3)) | RM10.00 per day |
| 5. Temporary permit in aid of charitable, religious or educational institution approved by the Commission | Free |
| 6. Fee for transfer of licence (by-law 4(11)) | RM10.00 each |
| 7. Fee for change of location of hawking area | RM10.00 |
| 8. Duplicate licence (by-law 4(2)) | |
| (a) Itinerant hawker | RM10.00 |
| (b) Static hawker | RM15.00 |
| (c) Temporary hawker | RM 5.00 |
| 9. Fee for the endorsement of appointment of an assistant or nominee in the licence (by-law 7(4)) | RM10.00 per endorsement |
| 10. Cost of removal of (by-law 22) | |
| (a) goods or articles or stalls or vehicles other than motor vehicles | RM100.00 |
| (b) motor vehicles or boats | RM200.00 |
| 11. Storage fees (by-law 22) | |
| (a) goods or articles or stalls or vehicles other than motor vehicles | RM50.00 for a period not exceeding 7 days and RM2.00 per day thereafter |
| (b) motor vehicles or boats | RM200.00 for a period not exceeding 7 days and RM20.00 per day thereafter |

Made this 20th day of June, 2005.

ABDUL HAMID BIN MOHD. YUSOFF,
Commissioner,
City of Kuching North

Dated this 20th day of June, 2005.

By Command,

PEHIN SRI DR. HAJI ABDUL TAIB MAHMUD,
Chief Minister Sarawak

JKM.P/SUL/MMKN/108

