



# **MUNICIPALITY OF STELLENBOSCH**

**Supervision and Control of The  
Carrying on of the Business of  
Street Vendor, Pedlar or Hawker  
By-Law**

## **SUPERVISION AND CONTROL OF THE CARRYING ON OF THE BUSINESS OF STREET VENDOR, PEDLAR OR HAWKER BY-LAW**

The Member of the Executive Council of the Province of Western Cape responsible for Trade Industry and Tourism, having been designated the competent authority to administer the provisions of the Business Act. 1991 (Act 71 of 1991), as contemplated by Proclamation No. 18 of 9 March 1995, has, in terms of Section 6A(1) of that Act, approved the By-law made by the Council of the Stellenbosch Municipality and set out in the Schedule below.

## **SUPERVISION AND CONTROL OF THE CARRYING ON OF THE BUSINESS OF STREET VENDOR, PEDLAR OR HAWKER BY-LAW**

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## Preamble

WHEREAS it is recognised that there is a need to create an environment in which the coining on of the business of informal trading is permitted in public streets and public places subject to the rights of all citizens o contained in the Constitution of the Republic of South Africa and the provisions of the Businesses Act. 1991 (Act 71 of 1991).

AND WHEREAS it is recognised that all active participants in the Western Cape economy are committed to creating conditions that will make street trading commercially viable and contribute to the economic activity and growth oldie Western Cape economy.

AND WHEREAS Local Government shall create an enabling environment for informal trading by the establishment of an annual budget reflecting the estimates of revenue and expenditure relating specifically to the provision of basic services and infrastructure.

AND WHEREAS there shall be a concomitant duty on the informal sector to participate fully in the economic growth of the Province and contribute to the tax base of the Province.

NOW THEREFORE this By-law is promulgated to facilitate the carrying on of that business and to provide for matters incidental thereto.

## Definitions

1. Unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Business Act, 1991 (Act 71 of 1991), shall, when used in this By-law. have the meaning thus assigned, and -
  - (i) “**Council**” means the council of the Stellenbosch Municipality and includes any committee or employee of the Council exercising powers or performing duties delegated to that committee or employee by the Council;
  - (ii) “**goods**” includes any receptacle, vehicle or movable structure used for the storage or transport of goods;
  - (iii) “**litter**” means any receptacle, container or other object or matter discarded or abandoned by a street trader or his or her customers;
  - (iv) “**local authority service**” means any system conducted by or on behalf of a local authority for the collection, conveyance, treatment or disposal of refuse, sewage or stormwater or for the manufacture, generation, impounding, storage, purification, distribution, conduction, transmission, conveyance, provision or supply of water, gas or electricity;
  - (v) “**local authority service works**” means all works of whatsoever nature necessary or desirable for or incidental, supplementary or ancillary to any local authority service and includes anything of whatsoever nature used for or in connection with any such works or service;

- (vi) “**nuisance**” means any conduct which brings about or may bring about a state of affairs or condition which constitutes a source of danger to a person or the property of a person or which materially interferes with the ordinary comfort, convenience, peace or quiet of a person:
- (vii) ‘**officer**’ means –
  - (a) a traffic officer appointed under Section 3 of the Road Traffic Act, 1989 (Act 29 of 1989);
  - (b) member of the Force a member of the Force as defined in Section 11(1) of the Police Act, 1958 (Act 7 of 1958);
  - (c) a peace officer contemplated in Section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
  - (d) an Environmental Health Officer in the service of the Council, or
  - (e) an official of the Council authorised to implement the provisions of this By-law;
- (viii) “**property**” in relation to a street trader, means money, goods, a receptacle, a vehicle or a movable structure used or intended to be used in connection with the carrying on of this or her business;
- (ix) “**public road**” means any road, street, thoroughfare or place (whether a thoroughfare or not) which is commonly used by the public or a Section of the public or to which the public has a right of access and includes –
  - (a) the verge of any such road, Street or thoroughfare;
  - (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare, and
  - (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;
- (x) “**public place**” means a square, a park, recreation grounds, sports grounds, a sanitary lane or an open space which has or have for residential purposes, if the owner or person in control or any occupier of the building objects thereto, and
- (xi) at a place where –
  - (a) it obstructs access to street furniture, bus passenger benches or shelters, queuing lines, refuse disposal bins or other facilities inrender for the use of the general public;
  - (b) it obstructs the visibility of a display window of business premises, if the person carrying on business in the business premises concerned objects thereto;

- (c) it obstructs access to a pedestrian arcade or mall;
- (d) it obstructs access to pedestrian crossing, parking or loading bays or other facilities for vehicular or pedestrian traffic;
- (e) it obstructs access to any vehicle;
- (f) it obstructs any road traffic sign or any making, notice or sign displayed in terms of this By-law; or
- (g) it interferes in any way with any vehicle that may be parked alongside such place.

### **Prohibited areas**

2. A person shall not carry on the business of street vendor, pedlar or hawker -
  - (a) in a garden or park to which the public has a right of access;
  - (b) on a verge contiguous to –
    - (i) a building belonging to, or occupied solely by, the State or the local authority;
    - (ii) a church or other place of worship; or
    - (iii) a building declared to be a national monument under the National Monuments Act, 1969 (Act 28 of 1969);
  - (c) in an area declared under Section 6A(2)(a) of the Act to be a place where the carrying on of the business of street vendor, pedlar or hawker is -
    - (i) prohibited; or
    - (ii) in contravention of a condition imposed by the Council in respect of such an area;
  - (d) at a place where -
    - (i) it causes an obstruction in front of a fire hydrant or any entrance to or exit from a building;
    - (ii) it causes an obstruction to vehicular traffic; or
    - (iii) it substantially obstructs pedestrians in their use of a sidewalk as defined in Section 1 of the Road Traffic Act, 1989;
  - (e) on a verge contiguous to a building in which business is being carried on by any person who sells goods of the same feature as or of a similar nature to goods being sold ????? pedlar or hawker concerned, without the consent of that person.

- (f) on that half of a public road contiguous to a building used
  - (bb) obstruct a local authority service or local authority service works;
  - (b) which the person carrying on the business of street vendor, pedlar or hawker has failed or refused to remove from the place concerned after having been requested to do so by an officer or a duly authorised employee of the Council; or
  - (c) which have been abandoned.
- (g) Any officer acting in terms of sub-section (1) shall –
  - (a) issue to the person carrying on the business of street vendor, pedlar or hawker a receipt for any goods so removed and impounded; and
  - (b) forthwith delivery any such goods to the Council.

### **General**

3. A person carrying on the business of street vendor, pedlar or hawker shall not -
  - (a) place his or her property on a public road or public place except for the purpose of commencing and conducting trade;
  - (b) in any way obstruct free access to any local authority service or local authority service works;
  - (c) obstruct access to a fire hydrant or any other designated facility or area demarcated solely for the use of emergency vehicles and service;
  - (d) let his or her property on a public road or public place cover an area which is greater than 3 m in length and 2 m in width; provided that in areas where adequate space is available these space dimensions may be increased to 4 m length and 2 m in width;
  - (e) if such business is carried on an any public road or public place;
    - (i) stay overnight at the place of such business, or
    - (ii) without the prior written approval of the Council, erect any structure (other than a device which operates in the same manner as an umbrella) for the purpose of providing shelter;
  - (f) 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 other Council property, or
  - (iii) create a traffic hazard;
- (g) other than in a refuse receptacle approved by the Council, accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any refuse, scrap or waste material on any land or premises or on any public road or public place;
- (h) (i) in connection with a subdivision of layout of land into erven, lots or plots, been provided, reserved or set apart for use by the public or the owners or occupiers of those erven, lots or plots, whether or not it is shown on a general plan, plan of subdivision or diagram;
- (ii) at any time been dedicated to the public;
- (iii) at any time been declared or rendered a public place by the local authority or another competent authority;
- (i) **“street trading”** includes the selling of goods or the supplying or offering to supply a service for reward as a street trader in a public road or public place, but does not include the sale of newspapers only;
- (j) **“street trader”** means a person who carries on the business of a street vendor, pedlar or hawker and includes an employee of such a person and shall, for the purpose of this By-law, include such a person who trades in a public road or public place;
- (k) **“the Act”** means the Business Act, 1991 (Act 71 of 1991); and
- (l) **“verge”** means that portion of the road, street or thoroughfare which is not the roadway.

#### **Cleanliness of place of business and protection of public health**

4. (1) A person carrying on the business of street vendor, pedlar or hawker shall -
- (a) unless prior written approval exempting that person from the provisions of this paragraph has been given by the Council, remove daily from any public road or public place at the conclusion of trading all waste, packaging material, stock and equipment of whatsoever nature which are utilised in connection with such business;
  - (b) if his or her activities involve the cooking or other preparation of food, take steps to ensure that no fat, oil or other substance drops or overflows onto the surface of a public road or public place or splashes against a building or other structure;

- (c) carry on business in such a manner as not to be a danger or threat to public health or public safety;
  - (d) at the request of an officer or a duly authorised employee of the Council move or remove anything from the place of business concerned so that that place may be cleaned; and
  - (e) carry on business in such a manner that the place of business is always in a clean and neat condition.
- (2) The local authority shall –
- (a) ensure that the sites on which the street traders trade are cleaned and sanitised on a regular basis;
  - (b) provide receptacles on the sites in order to facilitate the disposal of litter by the street traders; and
  - (c) ensure that the receptacles are emptied on a regular basis in order to facilitate the cleaning of trading sites.

### **Removal and impoundment**

5. (1) An officer may remove and impound any goods –
- (a) which –
    - (i) are found at a place where the carrying on of such business is prohibited or restricted in terms of Section 2 and which, in the officer's opinion, constitute an infringement of such Section; or
    - (ii) in the officer's opinion, are so placed that ????

### **Carrying of written approval**

6. A person carrying on the business of street vendor, pedlar or hawker shall, whenever such person is carrying on such business, carry on his or her person any written approval granted or issued to that person by the Council in terms of this By-law and shall on demand show such written approval to an officer or a duly authorised employee of the Council.

### **Charges**

7. The Council shall fix the charges payable to it for the letting of stands or stalls in demarcated areas under its control from where the carrying on of the business of street vendor, pedlar or hawker is permissible.

### **Appeals**

8. (1) A person who feels aggrieved by a decision of the Council may appeal against the decision to an Appeal Committee in accordance with the provisions set out herein.



- (2) A person who feels aggrieved by a decision of the Council shall, within 10 days of having received notification of the Council's decision, notify the Council and the chairperson of the Appeal Committee of an intention to appeal against the decision in writing.

### **Constitution of Appeal Committee**

9.
  - (1) The member of the Executive Council responsible for Economic Affairs may, with the concurrence of the Council, designate as members of the Appeal Committee representatives of the street vendors, pedlars or hawkers and any other interested persons.
  - (2) The Appeal Committee shall consist of a maximum of six members but at least two members shall be representatives referred to in sub-section (1).
  - (3) The members of the Appeal Committee shall appoint one member to act as chairperson.
  - (4) If the chairperson is of the opinion that a particular person is able to assist the Appeal Committee, that person may be co-opted to the Appeal Committee.
  - (5) A person so co-opted shall not be entitled to vote at a meeting of the Appeal Committee.
  - (6) The chairperson shall within 10 days of the receipt of the notice to appeal, notify the aggrieved person of the date, time and place of the meeting of the Appeal Committee at which that person's presence is required.
  - (7) The aggrieved person who has received notice in terms of **????**
    - (h) fail or refuse to remove or move any goods, receptacle, vehicle or movable structure after having been requested to do so by an officer or a duly authorised employee of the Council acting in terms of the provisions of Section 5(1);
    - (i) carry on the business of street trader at a stand or in an area contemplated in Section 6A(3)(b) of the Act if he or she is not in possession of written proof of having hired that stand or area from the local authority or it having been allocated otherwise; and
    - (j) carry on the business of street trader in contravention of the terms and conditions of the lease or allocation to him or her of a stand in terms of Section 6A(3)(c) of the Act.

### Procedure at appeal meetings

10. (1) The chairperson shall determine the procedure at the meeting.
- (2) All members shall be present at the meeting of the Appeal Committee.
- (3) Any person present at the meeting may –
  - (a) be called upon by the chairperson to give evidence;
  - (b) be called upon the chairperson to procedure to the Appeal Committee a document or other property which is in the person's possession or under that person's control, or
  - (c) be questioned by the Appeal Committee on the matter before it.
- (4) A decision of the Appeal Committee shall be taken by a majority of votes of the members present at the meeting and if there is an equality of votes, the chairperson shall have a casting vote in addition to a deliberative vote.
- (5) The Appeal Committee, having considered the evidence presented, may –
  - (a) refuse the appeal;
  - b) uphold the appeal, or
  - c) take any other steps that it may think ???
- (6) The Appeal Committee shall as soon as is practicable –
  - (a) notify the aggrieved person of its decision in writing, and
  - (b) furnish the aggrieved person with written reasons for the decision.

### Offences

11. A person who –
  - (a) contravenes or fails to comply with a provision of this By-law;
  - (b) ignores, disregards or disobeys a notice, sign or marking displayed or erected for the purposes of this By-law;
  - (c) contravenes or fails to comply with an approval or a condition granted or imposed in terms of this By-law.
  - (d) fails to comply with a request to move or remove his or her property;

- (e) deliberately furnishes false or misleading information to an officer or duly authorized employee of the council, or
- (f) threatens, resists, interferes with or obstructs an officer of duly authorized employee of the council in the exercise or performance of that officer's or employee's powers or duties under the By-laws: shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 (ONE THOUSAND RAND) or to imprisonment for a period not exceeding 3 (THREE) months.

### **Application**

- 12. The By-law set out in this Section is applicable throughout the area of jurisdiction at the Stellenbosch Municipality.

### **Repeal**

- 13. In terms of Section 3(2) of the Business Amendment Act, 1993 (Act 186 of 1993), the Regulations relating to Street Vendors, Pedlars or Hawkers promulgated by the former Administrator under Provincial Notice 404 of 28 August 1992 in Provincial Gazette 4746, to the extent that they apply in the area of jurisdiction of the Council but with the exception of regulations 6(4)(a) and (b) and 7, are hereby repealed. Furthermore, the Identification of Places where the Carrying on of Business of Street Vendor, Pedlar or Hawker is Prohibited: Stellenbosch, promulgated by the former Administrator under Provincial Notice 101 of 16 April 1993 in Provincial Gazette 4796, is hereby repealed.

## **SCHEDULE OF PRINCIPLES**

In accordance with the provisions of the Business Act. 1991 (Act 71 of 1991), and the By-laws and regulations promulgated in terms thereof, the following principles shall apply:

1. That legislation shall provide a framework to allow street traders to operate as legitimate contributors to the economic activity and growth of the Province.
2. Street traders shall have the freedom to trade in an open economy and pursue a livelihood as contributors to the economy of the Province.
3. Street traders shall have equal access to market opportunities.
4. Street traders shall be treated as entrepreneurs engaged in formal economic activity; however, the historical background from which the sector has emerged and the specific logistical problems associated with the sector shall be borne in mind.
5. Street traders shall be treated as entrepreneurs engaged in formal economic activity; however, the historical background from which the sector has emerged and the specific logistical problems associated with the sector shall be borne in mind.
6. Street traders shall contribute to the creation of a growing and expanding economy.
7. Street traders shall assist in the promotion of participation in the growth and development of the Western Cape economy with particular attention to the advancement of historically disadvantaged entrepreneurs and groups.
8. Street traders shall contribute to the creation of viable employment opportunities.
9. Street traders shall contribute to the protection of the environment and proper planning and development of the economy of the Province.
10. Street traders shall operate within the legal framework and contribute to the tax base of the Province.
11. Street traders and local authorities shall accept the principle of negotiation and fairness in the resolution of conflict.
12. Street traders shall contribute to the promotion of a clean and healthy environment and the protection of public health and safety sub-section (6) shall personally appear at the meeting and may appoint a legal representative or any other person to appear on the aggrieved person's behalf.