

7.5 BY-LAW ON INFORMAL TRADE

<i>File number</i>	:	1/3/1/10
<i>Report by</i>	:	Municipal Manager
<i>Compiled by</i>	:	Director: Strategic and Corporate Services
<i>Delegated Authority</i>	:	Council

1. PURPOSE OF THIS REPORT

To submit the By-law to Council for consideration.

2. BACKGROUND

The current By-laws addressing the above-mentioned issues are:

PROVINCIAL NOTICE	SUBJECT
PN 5243/98	By-law for the supervision and control of the carrying on of the business of streets vendor, pedlar or hawker

Copies of the By-laws are attached as **APPENDIX 1**. Find attached a copy of the suggested draft By-law Relating to Informal trade, which is attached hereto as **APPENDIX 2**.

3. DISCUSSION

The existing By-laws apply to the area of Stellenbosch before the promulgation of WCO24 in terms of the **Local Government: Demarcations Act of 1998**. Other areas which were incorporated in terms of said legislation is Franschhoek and Priel, but is not addressed in terms of said by-laws. The approval and later promulgation of the by-law will apply to the whole area of WCO24.

4. COMMENTS BY RELEVANT DEPARTMENTS

The Manager: Corporate Strategy and Compliance is suggesting that the draft By-law attached as **APPENDIX 2**, will address this shortcoming discussed above.

5. CONCLUSION

That the draft By-law be considered for approval.

RECOMMENDED

that the By-law on Informal Trade be advertised for public comment, whereafter same be re-submitted to Council via the Strategic and Corporate Services Committee, for final approval before promulgation.

(DIRECTOR: STRATEGIC AND CORPORATE SERVICES
TO ACTION)

MAYORAL COMMITTEE MEETING: 2013-08-21: ITEM 6.1.2

RECOMMENDED BY THE EXECUTIVE MAYOR

that the By-law on Informal Trade be advertised for public comment, whereafter same be re-submitted to Council via the Strategic and Corporate Services Committee, for final approval before promulgation.

(DIRECTOR: STRATEGIC AND CORPORATE SERVICES
TO ACTION)

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APPENDICES 1-2

BY-LAW ON INFORMAL TRADE

**15TH COUNCIL MEETING:
2013-08-29**

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APPENDIX 1

EXTRACT FROM THE BY-LAWS

**15TH COUNCIL MEETING:
2013-08-29**

20 March 1998

P.K. 164/1998

20 Maart 1998

WILDERNESS MUNICIPALITY

REMOVAL OF RESTRICTIONS ACT, 1967

John Lombard, in my capacity as Assistant Director in the Department of Housing and Planning, Western Cape, acting in terms of section 2(1) of the Removal of Restrictions Act, 1967 (Act 84 of 1967), duly delegated to me in terms of section 1 of the Western Cape Delegation of Powers Law, 1994, and on application by the owner of Erf 579, Wilderness, remove conditions B.4.(b) and (c) as set out in Deed of Transfer No. T.67904 of 1994.

MUNISIPALITEIT WILDERNIS

WET OP OPHEFFING VAN BEPERKINGS, 1967

Ek, Anzot Jong Lombard, in my hoedanigheid as Assistent-Direkteur in die Departement van Behuising en Beplyning, Wes-Kaap, funksioneel algemeen die bevoegdheid ontvang in artikel 2(1) van die Wet op Opheffing van Beperkings, 1967 (Wet 84 van 1967), bevoordag deur die eienaar van Erf 579, in terme van die Deelgewing van Magte Wet, 1994, en op aansoek van die eienaar van Erf 579, Wilderness, wil voorwaardes B.4.(b) en (c) soos in Transporente N. T.67904 van 1994, op.

20 March 1998

P.K. 163/1998

20 Maart 1998

HELDERBERG MUNICIPALITY

REMOVAL OF RESTRICTIONS ACT, 1967

It is hereby given that the Minister of Planning, Culture and Recreation, properly designated as competent authority in terms of paragraph (a) of State President Proclamation No. 180 of 31 October 1994, in terms of section 2(1) of the Removal of Restrictions Act, 1967 (Act of 1967) and on application by the owner of Erf 4503, The Strand, removes condition D.(b) contained in Deed of Transfer No. T.45474 of 1992.

MUNISIPALITEIT HELDERBERG

WET OP OPHEFFING VAN BEPERKINGS, 1967

Kennis gestel hiermee dat die Minister van Beplanning, Kulture en Administrasie, behoorlik aangewys as bevoegde gesag ingevolge paragraaf (a) van Staatspresident Proklamasie No. 180 van 31 Oktober 1994, in terme van artikel 2(1) van die Wet op Opheffing van Beperkings, 1967 (Wet 84 van 1967), en op aansoek van die eienaar van Erf 4503, Die Strand, het voorwaarde D.(b) soos in Transporente N. T.45474 van 1992, op.

20 March 1998

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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, Act 71 of 1991, as contemplated by Proclamation No. 18 of 1995, has, in terms of section 6A(1) of that Act, approved the bye-law made by the Council of the Stellenbosch Municipality and set out in schedule below.

Die Lid van die Uitvoerende Raad van die provinsie Wes-Kaap verantwoordelik vir Handel, Nywerheid en Toerisme, wat aangewys is as bevoegde gesag om die bepalings van die Wet op Besigheid, 1991 (Wet 71 van 1991), te administreer, soos beoog deur Proklamasie No. 18 van 9 Maart 1995, het ingevolge artikel 6A(1) van daardie Wet die verordening wat deur die Raad van die Stellenbosch Munisipaliteit gemaak is en in die Bylae hieronder uiteengesit is, goedgekeur.

SCHEDULE

STELLENBOSCH MUNICIPALITY

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

PREAMBLE

WHEREAS it is recognized that there is a need to create an order in which the carrying on of the business of informal trading in public streets and public places subject to the rights of all is contained in the Constitution of the Republic of South Africa and the Business Act, 1991 (Act 71 of 1991);

WHEREAS it is recognized that all active participants in the Cape economy are committed to creating conditions that will be trading commercially viable and contribute to the economic development of the Western Cape economy;

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

WHEREAS there shall be a concomitant duty on the informal traders fully in the economic growth of the Province and on the tax base of the Province;

WHEREFORE this by-law is promulgated to facilitate the carrying on of this business and to provide for matters incidental thereto.

Definitions

In this by-law, unless otherwise stated, any word or expression in

BYLAE

STELLENBOSCH MUNISIPALITEIT

VERORDENING VIR DIE TOESIG EN BEKERING OOR DIE BEDRYF VAN DIE BESIGHEID VAN STRAATHANDELAAR, VENTER OF SMOLUS

AANBEEF

AANGESIEN erken word dat 'n behoefte bestaan om 'n omgewing te skep waarin die bedryf van die besigheid van informele handel in openbare strate en openbare plekke gereguleer word, onderworpe aan die regte van die burgers soos verset in die Grondwet van die Republiek van Suid-Afrika en die bepalings van die Wet op Besigheid, 1991 (Wet 71 van 1991);

EN AANGESIEN erken word dat alle aktiewe deelnemers aan die Wes-Kaapse ekonomie hulle verbind tot die skepping van omstandighede wat alomvattend kommersieel lewensvatbaar sal maak en tot die ekonomiese ontwikkeling en groei van die Wes-Kaapse ekonomie sal bydra;

EN AANGESIEN erken word dat 'n insamellende omgewing vir informele handel moet skep deur die instelling van 'n jaarlikse begroting om ramings vir inkomste en uitgawes te verskaf wat spesifiek betrekking het op die voorsiening van basiese dienste en infrastruktuur;

EN AANGESIEN dat 'n gepaardgaande verpligting op die informele venter om ten volle deel te neem aan die ekonomiese groei van die Provinsie en om by te dra tot die belastingbasis van die Provinsie;

WORD DAAR DERHALWE hierdie verordening afgekondig om die bedryf van informele besigheid te vergemaklik en om voorsiening te maak vir sake wat verband hou met die verordening.

Woordeboek

In hierdie bylae, tenzij anderszins aangeduid, beteken enige woord of uitdrukking

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if a meaning has been assigned in the Businesses Act, 1991 (Act of 1991) shall, when used in this by-law, have the meaning thus given and—

"council" means the council of the Stellenbosch Municipality and includes any committee or employee of the council exercising power or performing duties delegated to that committee or employee by the council;

"goods" includes any receptacle, vehicle or movable structure used for the storage or transport of goods;

"litter" means any receptacle, container or other object or matter discarded or abandoned by a street trader or his or her customer;

"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, condensation, transmission, conveyance, provision or supply of water, gas or electricity;

"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 services;

"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;

"officer" means—

- (a) a traffic officer appointed under section 3 of the Road Traffic Act, 1989 (Act 29 of 1989);
- (b) a member of the Force as defined in section 1(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;

"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 his or her business;

"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;

"public place" means a square, a park, recreation grounds, sports grounds, a sanitary lane or an open space which has or have—

—waarnaas 'n betekenis in die Wet op Besighede, 1991 (Wet 71 van 1991), gegee is, die betekenis wat aldus toegevoeg is wanneer dit in hierdie verordening gebruik word en beteken—

- (i) "beesplek"—
 - (a) 'n verkeersbeesplek voorgestel in artikel 3 van die Padverkeerswet, 1989 (Wet 29 van 1989);
 - (b) 'n lid van die Mag tees omskryf in artikel 1(1) van die Politiewet, 1958 (Wet 7 van 1958);
 - (c) 'n vredebeesplek beoog in artikel 334 van die Strafproseduurewet, 1977 (Wet 51 van 1977);
 - (d) 'n omgewingsgesondheidsbeesplek in diens van die raad of
 - (e) 'n beesplek van die raad wat goetugtig is om die bepalinge van hierdie verordening toe te pas;

(ii) "die Wet" die Wet op Besighede, 1991 (Wet 71 van 1991);

(iii) "ziendom" met betrekking tot 'n smaandelaar, geld, goeder, 'n huis, 'n verryg of 'n bewegbare struktuur wat gebruik word of bestem is om gebruik te word in verband met die bedryf van sy of haar besigheid;

(iv) "goedere" ook enige huis, verryg of bewegbare struktuur wat vir die opberging of vervoer van goedere gebruik word;

(v) "oorlas" enige goeding wat 'n stand van sake of toestand aandui of kan meebring wat 'n bron van gevaar vir 'n persoon of die ziendom van 'n persoon inhou of wat wettelik inbreuk maak op die gewone geres, gemak, nu of vrede van 'n persoon;

(vi) "openbare pad" enige pad, smaal, deurgang of plek (heer 'n deurgang of nie) wat gewoonlik deur die publiek of 'n gedeelte daarvan gebruik word of waaraan die publiek 'n reg tot toegang het en ook—

- (a) die soom van sodanige pad, straat of deurgang;
- (b) enige brug, part of drif waaroor of waartoe enige sodanige pad, straat of deurgang loop, en
- (c) enige ander werk of voorwerp wat 'n deel uitmaak van of verbind is met of behoort tot daardie pad, straat of deurgang;

(vii) "openbare plek" 'n plein, park, ontspanningsveld, sportveld, nagteer of oop ruimte wat—

- (a) in verband met 'n onderverdeling of studey van grond is orwe, standplek of boupersele voornem, geskikbaar of opsy gesig is vir gebruik deur die publiek of die eienaar of bewoener van daardie orwe, standplek of boupersele, ongunstig of dit op 'n algemene plan, onderverdelingsplan of diagram aangewys word al dan nie;
- (b) te eniger tyd aan die publiek oopgedra is;
- (c) te eniger tyd deur 'n plaaslike owerheid of 'n ander bevoegde gesag tot openbare plek verklaar of 'n openbare plek gemaak is;

(viii) "plaaaslike owerheidsdiens" enige stelsel deur of namens 'n plaaslike owerheid bestuur vir die versameling, vervoer of afvoer, behandeling of wegdoen van wulle, Asofhuil of stormwater of vir die versameling, opwekking, opvang, opberging, stuwering, distribusie, peeling, transmissie, vervoer, versameling of verhoeding van water, gas of stroomkrag.

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for residential purposes, if the owner or person in control or any occupier of the building objects thereto, and

gebou wat vir residensiële doeleindes gebruik word, indien die eienaar of persoon in beheer of enige bewoner van die gebou daarteen beswaar maak, en

(y) at a place where—

it obstructs access to street furniture, bus passenger benches or shelters, queuing lines, refuse disposal bins or other facilities intended for the use of the general public;

(y) op 'n plek waar—

(i) die toegang tot straatmeubele, buspassasiersbankke of skuilings, toestaan-plekke, vuilishouers of ander geriewe wat vir die gebruik van die algemene publiek bedoel is, versper;

it obstructs the visibility of a display window of business premises, if the person carrying on business in the business premises concerned objects thereto;

(ii) die die sigbaarheid van 'n vertoonvenster van 'n sakeperseeel versper, indien die persoon wat sake in die betrokke sakeperseeel doen, daarteen beswaar maak;

it obstructs access to a pedestrian walkway or mall;

(iii) die toegang tot 'n voetgangermarkade of winkellaan versper;

it obstructs access to pedestrian crossings, parking or loading bays or other facilities for vehicular or pedestrian traffic;

(iv) aftoegang tot 'n voetganger, parkeer- of laaiwaaier of ander geriewe vir voertuigverkeer of voetgangerverkeer versper;

it obstructs access to any vehicle;

(v) die toegang tot enige voertuig versper;

it obstructs any road traffic sign or any marking, notice or sign displayed in terms of this by-law, or

(vi) die enige padverkeerteken of enige merk, kennisgewing of teken wat ingevoige hierdie verordening vertoon word, versper of

(vii) dit op enige wyse inbreuk maak op enige voertuig wat langs sodanige plek geparkeer is;

(z) interferes in any way with any vehicle that may be parked beside such place.

Algemeen

General

Person carrying on the business of street vendor, pedlar or hawkler shall not—

3. 'n Persoon wat die besigheid van straathandelaar, venter of smoot bedryf mag nie—

place his or her property on a public road or public place except for the purpose of conducting and conducting trade;

(a) sy of haar eiendom op 'n openbare pad of openbare plek plaas nie, behalwe met die doel om handel te begin dryf of te dryf;

In any way obstruct free access to any local authority service or local authority service works;

(b) op enige wyse die vrye toegang tot enige plaaslike owerheidsdiens of plaaslike owerheidsdienswerke belemmer nie;

obstruct access to a fire hydrant or any other designated facility or area demarcated solely for the use of emergency vehicles and services;

(c) toegang tot 'n brandkraan of enige ander aangewysde fasiliteit of gebied versper wat slegs vir die gebruik van noodvoertuie en nooddienste afgebaken is nie;

on 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 area dimensions may be increased to 4 m in length and 2 m in width;

(d) moet dat sy of haar eiendom op 'n openbare pad of openbare plek 'n oppervlakte van meer as 3 m lank en 2 m breed beslaan nie; met dien verstande dat in gebiede waar voldoende spaaie beskikbaar is, die afmetings toestaan tot 4 m lank en 2 m breed;

If such business is carried on on any public road or public place—

(e) indien sodanige besigheid op 'n openbare pad of openbare plek bedryf word—

(i) stay overnight at the place of such business, or

(i) by die plek wat sodanige besigheid oornag nie, of

without the prior written approval of the council, use any structure (other than a device which operates in the same manner as an umbrella) for the purpose of providing shelter;

(ii) sonder die voorafverreë skriftelike goedkeuring van die raad, enige struktuur (uitgesonderd 'n toosel wat op dieselfde wyse werk as 'n sambreel) met die doel om skuiling te verskaf, oprig nie;

carry on such business in such a manner as to—

(c) sodanige besigheid op so 'n wyse bedryf dat dit—

(i) create a nuisance;

(i) 'n oortos veroorsaak nie;

(ii) damage or deface the surface of any public road or public place or any other council property, or

(ii) die oppervlak van enige openbare pad of openbare plek of enige ander eiendom van die raad beskadig of skand nie, of

(iii) create a traffic hazard;

(iii) 'n gevaar vir die verkeer veroorsaak nie;

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;

(g) behalwe in 'n vuilishouer wat deur die raad goedgekeur is, enige vuilnis, rommel of afvalmateriaal op enige grond of perseel of op enige openbare pad of openbare plek ophoop, stoor, opstap of plaas of laat ophoop, stoor, opstap of plaas of laat plaas dat dit gevaar word nie;



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- (i) in connection with a subdivision or 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 considered a public place by the local authority or another competent authority;
- (iv) "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;
- (v) "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 purposes of this by-law, include such a person who trades in a public road or public place;
- (vi) "the Act" means the Businesses Act, 1991 (Act 71 of 1991); and
- (vii) "verge" means that portion of the road, street or thoroughfare which is not the roadway.

Prohibited areas

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 nature as or of a similar nature to goods being sold by that person, pedlar or hawker concerned, without the consent of that person;
- (f) on that half of a public road contiguous to a building used

- (ix) "plaanlike owerheidswerke" alle werke van watter aard ookal wat nodig of wenslik is vir of bytenssing is tot of handreiking is by of gepaard gaan met enige planmatige owerheidsdiens en sluit die enige diens in wat watter aard ookal en wat gebruik word vir of in verband met enige sodanige werke of diens;
- (x) "raad" die Raad van die Munisipaliteit Stellenbosch en sluit enige Komitee of werkgroep van die raad in wat beoogde uitroep of plig is siever wat deur die raad aan daardie komitee of werkgroep gedeeleer is;
- (xi) "rommel" enige houer of ander voorwerp of materiaal wat 'n straathandelare of sy of haar klante wegvoel of agterlaat;
- (xii) "seom" die gedeelte van 'n pad, straat of deurgang wat nie die rywyl is nie;
- (xiii) "straathandelaar" ook die verkoop van goedere of die lewering van 'n diens of die aanbied van 'n diens teen vergoeding as straathandelare in 'n openbare plek of openbare plek, maar sluit die nie die verkoop van koerantjies alleen in nie, en
- (xiv) "straathandelaar" 'n persoon wat die besigheid van straathandelare, venter of smous bedryf en sluit die 'n werkgroep van so 'n persoon in, en vir die toepassing van hierdie verordening sluit dit so 'n persoon in wat in 'n openbare pad of openbare plek handel dryf.

Verbodingsgebiede

2. 'n Persoon mag nie die besigheid van straathandelare, venter of smous bedryf nie—

- (a) in 'n stasie of plek waartoe die publiek 'n reg van toegang het;
- (b) op 'n seom aangrensend aan—
 - (i) 'n gebou wat behoort aan, of geskep word slegs deur, die Staat of die plaaslike owerheid;
 - (ii) 'n kerk of ander plek van aanbidding, of
 - (iii) 'n gebou wat kragtens die Wet op Nasionale Gedenkwaardighede, 1969 (Wet 28 van 1969), tot nasionale gedenkwaardigheid verklaar is;
- (c) in 'n gebied van kragtens artikel 6A(2)(a) van die Wet verklaar is tot 'n gebied waar die bedryf van die besigheid van straathandelare, venter of smous—
 - (i) verbied word af;
 - (ii) in stryd is met 'n voorwaarde wat deur die raad aan daardie gebied opgedel is;
- (d) op 'n plek waar—
 - (i) dit 'n brandweer of 'n ingang of uitgang van 'n gebou versper;
 - (ii) die voorafgevoerde belemmering, of
 - (iii) die voetgangers wenke belemmer in die gebruik van 'n sypaadjie, soos omskryf in artikel 1 van die Padverkeerswet, 1989;
- (e) op 'n seom aangrensend aan 'n gebou waarin besigheid bedryf word deur 'n persoon wat goedere verkope wat van die aard is of 'n soortgelyke aard is as goedere wat deur die betrokke straathandelare, venter of smous verkope word, sonder die toestemming van daardie persoon;
- (f) op daardie half van 'n openbare pad aangrensend aan 'n

(10) observe a local authority service or local authority service works:

(b) which the person carrying on the business of street vendor, pedlar or hawkker 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.

Any officer acting in terms of subsection (1) shall—

(a) issue to the person carrying on the business of street vendor, pedlar or hawkker a receipt for any goods so removed and impounded, and

(b) forthwith deliver any such goods to the council.

Carrying of written approval

A person carrying on the business of street vendor, pedlar or hawkker shall, whenever such person is carrying on such business, carry on his 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

The council shall fix the charges payable to it for the leasing of stands in demarcated areas under its control from where the carrying of the business of street vendor, pedlar or hawkker is permissible.

Appeals

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.

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

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 hawkkers and any other interested persons.

The Appeal Committee shall consist of a maximum of six members but at least two members shall be representatives referred to in subsection (1).

The members of the Appeal Committee shall appoint one member to act as chairperson.

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.

A person so co-opted shall not be entitled to vote at a meeting of the Appeal Committee.

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.

The aggrieved person who has received notice in terms of

(b) 'n plaaslike owerheidsdiens of plaaslike owerheidsdienswerke belemmer:

(b) wat die persoon wat die besigheid van straat-handelaar, venter of strouw bedryf, verduin of geweer het om van die betrokke plek te verwyter nadat hy of sy deur 'n beampte of 'n behoorlik gemaatigde werknemer van die raad daarmee versoek is, of

(c) wat daar oortuigend is.

(2) Enige beampte sal ingevolge subartikel (1) optree, moet—

(a) aan die persoon wat die besigheid van straat-handelaar, venter of strouw bedryf, 'n kwitantst bliek vir enige goeder wat aldus verwyter en geskus word, en

(b) onverwytd enige sodanige goedere aan die raad oortuigend.

Dra van skriftelike goedkeuring

6. 'n Persoon wat die besigheid van straat-handelaar, venter of strouw bedryf, moet wanneer oortuigend sodanige persoon sodanige besigheid bedryf, enige skriftelike goedkeuring wat deur 'n raad ingevolge hierdie verordening aan daardie persoon toegestaan of uitgetrek is, op sy of haar persoon dra en moet op aanvrag sodanige skriftelike goedkeuring aan 'n beampte of behoorlik gemaatigde werknemer van die raad toon.

Geld

7. Die raad stel die geld wat aan hom betaalbaar is vir die verhuur van staanplekke of stallings binnem afgebakende gebiede onder sy beheer, van waar die bedryf van die besigheid van straat-handelaar, venter of strouw toelaatbaar is.

Appella

8. (1) 'n Persoon wat verontreg voel deur 'n besluit van die raad kan by 'n Appèlkomitee appeller in ooreenstemming met die bepalinge hiërks uiteengeset.

(2) 'n Persoon wat verontreg voel deur 'n besluit van die raad moet binne 10 dae na ontvang van die kennisgewing van sy besluit die raad skriftelik in kennis stel van 'n voorneme om teen die besluit te appeller.

Saamstelling van Appèlkomitee

9. (1) Die lid van die Uitvoerende Raad verantwoordelik vir Ekonomiese Aangeleenthede kan, met die instemming van die raad, verskewewoedigers van die straat-handelaars, venters of strouwe en enige ander belanghebbendes as lede van die Appèlkomitee aanwys.

(2) Die Appèlkomitee moet bestaan uit hoogstens ses lede, maar minstens twee lede moet vertewewoedigers kered in subartikel (1) wees.

(3) Die lede van die Appèlkomitee moet een lid aanstel om as voorlitter te dien.

(4) As die voorlitter van mening is dat 'n bepaalde persoon in staat is om die Appèlkomitee behulpzaam te wees, kan daardie persoon in die Appèlkomitee gekoedptreer word.

(5) 'n Persoon wat aldus gekoedptreer is, is nie geregtig om op 'n vergadering van die Appèlkomitee te stem nie.

(6) Die voorlitter moet die verskewte persoon binne 10 dae vanaf ontvang van die kennisgewing van appèl verwittig van die datum, tyd en plek van die vergadering van die Appèlkomitee wat daardie persoon se teenwoordigheid verods word.

(7) Die verskewte persoon wat ingevolge subartikel (4) kennis

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- iii) 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);
- iv) carry on the business of street trader at a stand or in an area contemplated in section 6A(1)(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
- v) 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.

Cleanliness of place of business and protection of public health

- (1) A person carrying on the business of street vendor, pedlar or hawkler 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 drips 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 vendors 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 vendors; and
 - (c) ensure that the receptacles are emptied on a regular basis in order to facilitate the cleaning of trading sites.

Removal and impoundment

- (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 they—

- (b) versuim of weier om enige goedere, houers, vooruig of bewegbare struktuur te verwyder of te verhuis; nadat hy of sy deur 'n bevoegde of 'n behoorlik gemagtigde werknemer van die raad wat ingevolge die bepalinge artikel 5(1) optree daartoe versoek is nie;
- (c) die besigheid van straat-handelaar bedryf op 'n staanplek of in 'n gebied in artikel 6A(1)(b) van die Wet beoog nie indien hy of sy nie in besit is van skriftelike bewys dat hy of sy daardie staanplek of gebied van die plaaslike owerheid gehuur het of dat dit andersins aan hom of haar toegewys is nie; en
- (d) die besigheid van straat-handelaar bedryf in oyd met die bepalinge en voorwaardes van die huurkontrak of toewysing aan hom of haar van 'n staanplek ingevolge artikel 6A(3)(c) van die Wet nie.

Sindelikhed van plek van besigheid en beskerming van openbare grondareas

- 4. (1) In persoon wat die besigheid van straat-handelaar, venter of smous bedryf, moet—
 - (a) teeny skriftelike goedkeuring vooraf deur die raad verken is, wat daardie persoon van die bepalinge van hierdie paragraaf vrystel, alle oorniel, verpakkingmateriaal, voorraad en oewerlading van water aan die oewer van in verband met sodanige besigheid gebruik word, na afloop van elke dag se handeldryf van enige openbare pad of openbare plek verwyder;
 - (b) indien sy of haar bedrywighede die knoel of ander bemsiding van voedingsmiddels behels, stappe doen om te verseker dat geen vet, olie of iets anders op die oppervlak van 'n openbare pad of openbare plek drup of stoor, of eers 'n gebou of ander struktuur spul nie;
 - (c) besigheid op so 'n wyse bedryf dat dit nie 'n gevaar of bedringing vir die openbare gesondheid of openbare veiligheid inhou nie;
 - (d) op versoek van 'n beampte of 'n behoorlik gemagtigde werknemer van die raad enigeis van die beskutte plek van besigheid verhuis of verwyder sodan die plek van besigheid skoonmaak laat word; en
 - (e) besigheid op so 'n wyse bedryf dat dit die plek van besigheid te alle tye in 'n skoon en netjiese toestand is.
- (2) Die plaaslike owerheid moet—
 - (a) verseker dat persele waar straat-handelaars handel dreef op 'n gereelde grondslag skoonmaak en gereinig word;
 - (b) houers op die persele voorsien ten einde die wegvoers van rommel deur die straat-handelaars te vergemaklik; en
 - (c) verseker dat die houers op 'n gereelde grondslag leeggemaak word ten einde die skoonmaak van handelspersele te vergemaklik.

Verwydering en skui

- 5. (1) 'n Beampte kan enige goedere verwyder en skui—
 - (a) wat gevind word op 'n plek waar—
 - (i) die bedryf van sodanige besigheid ingevolge artikel 2 verbode of beperk is en wat na die oorendel van die beampte 'n oortreding van sodanige artikel is; of
 - (ii) na die oorendel van die beampte, sodanige goedere so geplaat is dat dit—



Application

...law set out in this Schedule is applicable throughout the area of jurisdiction of the Stellenbosch Municipality.

Repeal

...of section 112 of the Businesses Amendment Act 1993 (Act 136 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 1992/106 to the extent that they apply in the area of jurisdiction of the Municipality 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 1993/106 is hereby repealed.

SCHEDULE OF PRINCIPLES

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

...shall provide a framework to allow street traders to operate as legitimate contributors to the economic activity and growth in the Province.

...traders shall have the freedom to trade in an open economy and to be a livelihood as contributors to the economy of the Province.

...traders shall have equal access to market opportunities.

...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.

...traders shall have the freedom to associate and constitute themselves into bodies and organisations of their choice, provided that they are formally constituted and have a recognised membership. These properly constituted bodies shall be recognised by government or other sectors.

...traders shall contribute to the creation of a growing and spending economy.

...traders shall assist in the promotion of participation in the work and development of the Western Cape economy with particular attention to the advancement of historically disadvantaged people and groups.

...traders shall contribute to the creation of viable employment opportunities.

...traders shall contribute to the protection of the environment and to proper planning and development of the economy of the Province.

...traders shall operate within the legal framework and contribute to the tax base of the Province.

...traders and local authorities shall accept the principle of expedition and fairness in the resolution of conflicts.

...traders shall contribute to the promotion of a clean and healthy environment and the protection of public health and safety.

Toevoeging

- Die verordening wat in hierdie Bylae uiteengesit is, is oral in die Stellenbosch Munisipaliteit se regsbied van toepassing.

Herroeping

- Ingevolge artikel 112 van die Wysigingswet op Bestuurde, 1993 (Wet 136 van 1993), word die Regulasies rakende Straathandelaars, Verkeers of Smous, afgekondig deur die voormalige Administrateur Kransens Provinciale Kennisgewing 404 van 28 Augustus 1992 in Provinciale Koerant 4746, in die mate dat dit in die raad se regsbied van toepassing is maar met uitsondering van regulasies 6(4)(a) en (b) en 7, hierby betroep. Osaamre staan word die Aanduiding van Plekke waar die Dryf van die Bealigheid van Straathandelaar, Verkeers of Smous Verbied is; Stellenbosch, afgekondig deur die voormalige Administrateur Kransens Provinciale Kennisgewing 101 van 16 April 1993 in Provinciale Koerant 4796, hierby herroep.

BYLAE VAN BEGINSZELS

In ooreenstemming met die bepalinge van die Wet op Bestuurde, 1991 (Wet 71 van 1991) en verordeninge en regulasies ingevolge daarvan afgekondig, is die volgende beginsels van toepassing:

- Daardie wetgewing moet 'n raamwerk voorsien ten einde straat-handelaars in staat te stel om as regmatige bydraers tot die ekonomiese aktiwiteit en groei van die Provinsie te werk te gaan.
- Straat-handelaars moet die vryheid hê om in 'n oop ekonomiese handel te dryf en 'n bydraer te maak as bydraers tot die ekonomie van die Provinsie.
- Straat-handelaars moet gelyke toegang tot markte en geleenthede hê.
- Straat-handelaars moet as entrepreneurs wat meedoën aan formele ekonomiese bedryfskemas, behandel word; die historiese agtergrond waartoe die sektor ontstaan het en die spesifieke logistiese probleme waarmee die sektor te kamp te maak het, moet agter in gedagte gehou word.
- Straat-handelaars moet die vryheid van assosiasie hê en hulke tot liggame en organisasies van hul keuse kan konstitueer, op voorwaarde dat hulle formeel gekonstitueer word en 'n erkende lidmaatskap het. Hierdie behoorlik gekonstitueerde liggame en organisasies moet deur die regering en ander sektore erken word.
- Straat-handelaars moet bydra tot die skepping van 'n ekonomiese wat groei en vryheid.
- Straat-handelaars moet bydra tot die bevordering van deelname aan die groei en ontwikkeling van die Wes-Kaapse ekonomie, met besondere aandag aan die bevordering van historiese agterblywende entrepreneurs en groepe.
- Straat-handelaars moet bydra tot die skepping van lewensvatbare werkgeleenthede.
- Straat-handelaars moet bydra tot die beskerming van die omgewing en die behoorlike beplanning en ontwikkeling van die ekonomie van die Provinsie.
- Straat-handelaars moet blywe die raamwerk van die wetwerke tot die betrekking van die Provinsie bydra.
- Straat-handelaars en plaaslike owerhede moet die beginsel van outerhandel en regverdigheid in die oplossing van konflikte aanvaar.
- Straat-handelaars moet bydra tot die bevordering van 'n skoon en gesonde omgewing en die beskerming van die openbare gesondheid en veiligheid.

subsection (4) shall personally appear at a meeting and may appoint a legal representative or any other person to appear on the aggrieved person's behalf.

Procedure at appeal meetings

- (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 by the chairperson to produce to the Appeal Committee a document or other property which is in that 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 fit.
- (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.

Officers

- 11. A person who—
 - (a) contravenes or fails to comply with a provision of this by-law;
 - (b) ignores, disregards or disobeys a notice given or marking displayed or treated 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 authorised employee of the council; or
 - (f) threatens, resists, interferes with or obstructs an officer or duly authorised employee of the council in the exercise or performance of that officer's or employee's powers or duties under this by-law; shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand (R1 000) or to imprisonment for a period not exceeding three (3) months.

antwank het moet die vergadering persoonlik bywoon en kan 'n regsverteenwoordiger of enige ander persoon aanstel om namens die verontregte persoon te verskyn.

Prosedure op appelleringstermins

- 10. (1) Die voorsitter moet die prosedure op die vergadering bepaal.
- (2) Al die lede moet op die vergadering van die Appèlkomitee teenwoordig wees.
- (3) Enige persoon wat die vergadering bywoon, kan—
 - (a) deur die voorsitter versoek word om getuenis te lewer;
 - (b) deur die voorsitter versoek word om 'n dokument of ander eiendom in daardie persoon se besit of onder daardie persoon se beheer aan die Appèlkomitee voor te lê; of
 - (c) deur die Appèlkomitee ondervra word oor die saagseenheid wat voor die komitee dien.
- (4) 'n Besluit van die Appèlkomitee moet geneem word met 'n meerderheid van stemme van die lede wat op die vergadering teenwoordig is, en in die geval van 'n staking van stemme het die voorsitter 'n beslissende stem benevens 'n gewone stem.
- (5) Die Appèlkomitee kan, nadat hy die getuenis wat gelewer is, oorweeg het—
 - (a) die appèl van die hand wys;
 - (b) die appèl handhaaf; of
 - (c) ander stappe doen soos wat hy goeddink.
- (6) Die Appèlkomitee moet so gou doenlik—
 - (a) die verontregte persoon skriftelik van sy besluit kennis gee; en
 - (b) die verontregte persoon van skriftelike redes vir die besluit voorsien.

Midrywe

- 11. (1) 'n Persoon wat—
 - (a) 'n bepaling van hierdie verordening oortre of oortreding daarvan te voldoen;
 - (b) 'n kennisgewing, teken of merk wat vir die toepassing van hierdie verordening vertoon of opgehang is, ignoreer, verontagsaam of nie gehoorsaam nie;
 - (c) 'n goedkeuring of voorwaarde wat ingevolge hierdie verordening verleen of opgehang is, oortre of oortreding daarvan te voldoen;
 - (d) versuim om te voldoen aan 'n versoek om sy of haar eiendom te verskuif of te verwyder;
 - (e) opsetlik vals of misleidende inligting aan 'n beampte of bevoegde werknemer van die raad verskaf; of
 - (f) 'n beampte of bevoegde werknemer van die raad by die uitvoering of uitvoering van daardie beampte of werknemer se bevoegdhede of pligte kragtens hierdie verordening dreig, teëstaande, hom of haar daarmee bedreig of die beampte of werknemer dwarsboom, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens eenhonderd rand (R1 000) of 'n gevangenskap vir 'n tydperk van hoogstens drie (3) maande.

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Art 2 (c) van Pk 165 van 20 Maart 1998

Person mag nie die besigheid van straathandelaar, venter of smous bedryf nie op 'n soors aangrensend aan 'n gebou waarin besigheid bedryf deur 'n persoon wat goedere verkoop wat van dieselfde of oortgelyke aard is as goedere wat deur die betrokke straathandelaar, venter of smous verkoop word sonder die toestemming van daardie persoon.

Boete : R200,00

Art 2 (E) van Pk 166 van 20 Maart 1998

Person mag nie die besigheid van straathandelaar, venter of smous bedryf nie op daardie helfte van 'n openbare pad aangrensend aan 'n gebou wat vir residensiële doeleindes gebruik word, indien die eienaar of persoon in beheer of enige bewoner van die gebou daarteen beswaar maak.

Boete : R150,00

Art 2 (g)(i) van Pk 166 van 20 Maart 1998

Person mag nie die besigheid van straathandelaars, venter of smous bedryf op 'n plek waar dit toegang tot straat toebehoort, buspassasiersbanke of -skuilings, toustaanplekke, vuilshouers of ander geriewe wat vir die gebruik van die algemene publiek bedoel is.

Boete : R150,00

Art 2 (g)(ii) van Pk 166 van 20 Maart 1998

Person mag nie die besigheid van straathandelaar, venter of smous bedryf op 'n plek waar dit toegang tot 'n voetgangerarkade of winkellaan versper nie.

Boete : R150,00

Art 2 (g)(iii) van Pk 166 van 20 Maart 1998

Person mag nie die besigheid van straathandelaar, venter of smous bedryf op 'n plek waar dit toegang tot 'n voortoegang, parkeer- of oewerplakke of ander geriewe vir voertuigverkeer of voetgangverkeer versper nie.

Boete : R150,00

Art 2 (g)(v) van Pk 166 van 20 Maart 1998

Person mag nie die besigheid van straathandelaar, venter of smous bedryf op 'n plek waar dit die toegang tot enige voertuig versper nie.

Boete : R150,00

Art 2 (g)(vi) van Pk 166 van 20 Maart 1998

Person mag nie die besigheid van straathandelaar, venter of smous bedryf op 'n plek waar dit enige padverkeerstake of enige merk, wysigings of teken wat ingevolge hierdie verordening vertoon word versper nie.

Boete : R150,00

Art 2 (g)(vii) van Pk 166 van 20 Maart 1998

Person mag nie die besigheid van straathandelaar, venter of smous bedryf op 'n plek waar dit op enige wyse inbreuk maak op enige voertuig langs sodanige plek geparkeer is.

Boete : R150,00

Art 4 (1)(e) van Pk 166 van 20 Maart 1998

'n Persoon wat die besigheid van straat-handelaar, venter of smous bedryf moet die besigheid op so 'n wyse bedryf dat dit die plek van besigheid te alle tye in 'n skoon en netjiese toestand is.

Boete : R200,00

Art 6 van Pk 166 van 20 Maart 1998

'n Persoon wat die besigheid van straat-handelaar, venter of smous bedryf moet wanneer ookal sodanige persoon sodanige besigheid bedryf enige skriftelike goedkeuring wat deur 'n Raad ingevolge hierdie verordeninge aan daardie persoon toegestaan of uitgereik is, op sy of haar persoonlik dra en moet op aanvraag sodanige skriftelike goedkeuring aan 'n beampte of behoorlike gemagtigde werknemer van die Raad toon.

Boete : R150,00

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ITEM 7.5

APPENDIX 2

COPY OF THE PROPOSED
DRAFT BY-LAW RELATING
TO INFORMAL TRADE

15TH COUNCIL MEETING:
2013-08-29

STELLENBOSCH MUNICIPALITY BY-LAW ON **2013** INFORMAL TRADE



STELLENBOSCH MUNICIPALITY BY-LAW ON INFORMAL TRADE

PREAMBLE

Stellenbosch Municipality, by virtue of the powers vested in it by **section 156(2) of the Constitution of the Republic of South Africa** as amended, read with **section 13 of the Local Government : Municipal Systems Act, 2000 (Act 32 of 2000)**, has made the By-law set out below.

In this by-law, words used in the masculine gender include the feminine;

All singular meanings shall include the plural interpretation and vice versa;

The English text shall prevail in the event of an inconsistency between the different texts, unless the context otherwise indicates.

WHEREAS it is recognised that there is a need to create an environment in which the carrying on the business of informal trading is permitted in public streets and public places, subject to the rights of all citizens as contained in the **Constitution of the Republic of South Africa, 1996, (Act 108 of 1996)** and the provisions of the **Business Act 1991 (Act 71 of 1991)**;

AND WHEREAS Stellenbosch Municipal Council recognises the contribution of informal trading in poverty alleviation, income generation and entrepreneurial development and the impact that informal trading has on the historically disadvantaged individuals and communities.

AND WHEREAS Stellenbosch Municipal Council also acknowledges the need to adopt a developmental approach to the informal trading sector in order to create an environment that is conducive to growth of business within the informal trading sector.

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

1. DEFINITIONS

"**authorised official**" means an employee of the municipality authorized by the municipal manager to perform functions and duties in terms of the provisions of this by-law.

STELLENBOSCH MUNICIPALITY BY-LAW ON **2013** INFORMAL TRADE

"**bay**" means an area on a street, the boundaries of which are clearly marked out, and allocated with the number which also appears on a trading plan approved by the council.

"**council**" means the council of the Stellenbosch Municipality as contemplated in **section 18 of the Local Government : Municipal Structures Act, 1997 (Act 117 of 1997)** and includes any committee or employee of the council exercising powers or performing duties delegated to that committee or employee by the council.

"**declaration**" means an order published by the council in the Official Gazette, in terms of which an area as defined in such a declaration is restricted for trading.

"**goods**" includes any receptacle, vehicle or movable structure used for the storage or transportation of goods.

"**litter**" means any receptacle, container or other object or matter discarded or abandoned by a street trader or his or her customers.

"**local authority services**" 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.

"**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;

"**Municipality**" means the Municipality of Stellenbosch established in terms of **section 12 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)**, published in **Provincial Notice 5642 dated 4 December 2000** and includes any political structure, political office-bearer, councillor, or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office-bearer, councillor, or employees.

"**Municipal Manager**" means the official appointed by the council in the capacity of the Municipal Manager in terms of **section 54 of the Local Government : Municipal Systems act, 1997 (Act 117 of 1997)**.

"**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.

"**officer**" means –

- (a) a traffic officer appointed under **section 3 of the National Road Traffic Act, 1996 (Act 93 of 1996)**;
- (b) a member of the Force as defined in **section 1(1) of the Police Act, 1958 (Act 29 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 the District Municipality,
- (e) an official of the council authorised to implement the provisions of this by-law.

STELLENBOSCH MUNICIPALITY BY-LAW ON 2013 INFORMAL TRADE

"**permit**" means an official approval issued by the municipal manager or his delegate in terms of which a trader is allowed to trade for a bay in a street situated within a restricted area, subject to such terms and conditions as may be imposed by the council.

"**property**" in relation to a street trader, means money, goods, receptacle, a vehicle or a movable structure used or intended to be used in connection with the carrying on of his or her business.

"**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.

"**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;

- (a) in connection with a subdivision or lay-out 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;
- (b) at any time been dedicated to the public;
- (c) at any time been declared or rendered a public place by the local authority or another competent authority.

"**street**" means any public road, street, thoroughfare, parking bay, parking area, road and street reserve, sidewalk, verge, bridge or drift.

"**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 and is not limited to the sale of newspapers only.

"**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 for the purposes of this by-law.

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"trade" means the carrying on of the business on a street, either by selling wares or by rendering a service to the public.

"trader" means a person who carries on the business of informal trader on a street or public place.

"the Act" means the **Businesses Act 1991 (Act 71 of 1991)**.

"verge" means that portion of the road, street or thoroughfare which is not the roadway.

2. FREEDOM TO ENGAGE IN FORMAL TRADING

Informal trading is permitted in any area, within the geographical area of operation for the Greater Stellenbosch, subject to any trading plans adopted by the council, and subject to the provisions of this by-law and/or other applicable legislation.

3. ADOPTION OF TRADING PLANS

3(1) The municipality must, where appropriate, adopt trading plans, to regulate informal trading.

3(2) A trading plan must:

3(2)(1) define the geographical boundary of the trading area;

3(2)(2) demarcate informal trading bays and markets where informal trading is permitted, outside of which informal trading, shall be prohibited in that trading area.

3(3) A trading plan may include any other matters governing informal trading in the relevant trading area, as such:

3(3)(1) prescribing any informal trading conditions, including such terms and such conditions imposed in terms of permits, issued in terms of this by-law;

3(3)(2) the manner in which social and economical development will be promoted through the trading plan;

3(3)(3) the manner in which sensitive heritage and environmental areas, within the proposed trading area will be protected;

3(3)(4) matters relating to a market which may be located within the relevant trading area, including, but not limited to:

3(3)(4)(1) the demarcation of the area within a trading area which constitutes a market;

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- 3(3)(4)(2) where appropriate, the demarcation of trading bays within the market;
- 3(3)(4)(3) the legal arrangements between the municipality and any third party or organization in respect of obligations relating to the general management of the market in which the third party or organization will be responsible for the following:
 - 3(3)(4)(3)(1) the management and operations of the market;
 - 3(3)(4)(3)(2) the management of informal traders operating within a specific market area;
 - 3(3)(4)(3)(3) ensuring that all relevant persons participate in appropriate decisions, which are relevant to them;
 - 3(3)(4)(3)(4) providing guidance to informal traders operating within the market, with business support and development services;
 - 3(3)(4)(3)(5) any services additional to those municipal services provided by council.

3(4) Any trading plans must comply with **section 5**, of this by-law and with any other applicable legislation.

3(5) Any person shall be entitled to request that the municipality consider the adoption of a trading plan; provided that the municipality will consider such a request within a reasonable time.

3(6) When considering a request for the adoption of a new trading site the municipality shall have due regard for any existing and proposed trading plans in the vicinity of the proposed trading area in order to determine the desirability of the adoption of said trading plan.

4. PUBLIC PARTICIPATION IN RESPECT TO THE ADOPTION OF A TRADING PLAN

4(1) Before adopting a trading plan the municipality shall:

4(1)(1) consult with interested and affected role players including the informal and formal sectors before compiling a trading plan.

4(1)(2) compile a draft trading plan following a consultation process.

4(1)(3) publish notices in at least 2 (two) local daily newspapers, which are circulated in the area, in which the proposed trading area is situated.

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- 4(2) These notices must at least contain:
- 4(2)(1) the key aspects of the draft trading plan;
 - 4(2)(2) notification to the public that the draft trading plan is open for inspection at a specified location;
 - 4(2)(3) invite comments and objections from the public in relation to such draft trading plan, to be received by the municipality within 14 days of the date of publication.
- 4(3) If the municipality so wishes it can apply its discretion to hold a public meeting during which the proposed informal trading area(s) can be discussed.

5. CONSIDERATIONS OF OPTIONS PRIOR TO ADOPTING A TRADING PLAN

- 5(1) The municipality must consider all objections and comments received regarding the adoption of new trading plans.
- 5(2) Thereafter council must within a reasonable period from the date of the commencement of the public participation process in respect of the trading plan, consider:
- 5(2)(1) the adoption of the draft trading plan;
 - 5(2)(2) any amendments to the draft trading plan;
 - 5(2)(3) the rejection of the draft trading plan.
- 5(3) In the event of the adoption of the draft trading plan by council, a notice must be published in at least 2 (two) local newspapers and the Provincial Gazette, which informs the public that:
- 5(3)(1) the draft trading plan had been adopted by council, as a trading plan;
 - 5(3)(2) of the key aspects of the trading plan, including the date on which it shall become effective; and
 - 5(3)(3) that the trading plan is available for inspection at a specified location.

6. AMENDMENT, REVOCATION AND REVIEW OF TRADING PLANS

- 6(1) The municipality may amend, revoke and review the adoption of trading plans, provided that if the amendment deviates materially from the adopted trading plan then the municipality should embark on the public participation process prescribed in **section 4** of this by-law.

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- 5(2) If any persons rights are affected negatively the municipality must afford those affected an opportunity to exercise their rights to just administrative action.
- 5(3) The municipality must review trading areas from time to time as they deem it fit.

7. RESTRICTIONS ON STREET TRADING

- 7(1) No trader may trade in a street contiguous to:
 - 7(1)(1) a building belonging to or occupied by the state or the municipality, without prior written authorisation;
 - 7(1)(2) a church or other place of worship, without relevant consultation and approval;
 - 7(1)(3) a building declared as a monument in terms of legislation, until the trading plan is approved by Council;
 - 7(1)(4) a building in which business is being carried on by any person who sells goods of the same nature or of such similar nature to goods being sold by the trader concerned, unless a public consultation process is followed;
 - 7(1)(5) a building used for residential purposes, unless a public consultation process is followed.
- 7(2) No person may trade in a street or public place, where:
 - 7(2)(1) a fire hydrant or any other designated facility or area demarcated solely for the use of emergency vehicles and services;
 - 7(2)(2) vehicular and pedestrian traffic is obstructed or a traffic hazard is created;
 - 7(2)(3) any facility, where the use of the general public is obstructed;
 - 7(2)(4) the visibility of a display window at a business premises is obstructed;
 - 7(2)(5) traffic sign, road marking, notices or signs are obstructed;
 - 7(2)(6) access to loading and/or parking bays, vehicular or other facilities for vehicular or pedestrian traffic is limited; or
 - 7(2)(7) free access to municipal service works is obstructed;
 - 7(2)(8) an entrance or an exit to a building is obstructed;
 - 7(2)(9) in a garden or park under the control of the municipality, to which the public has a right of access;
 - 7(2)(10) it obstructs access to street furniture, bus passenger benches or

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shelters, queuing lines, refuse disposal bins or other facilities intended for the use of the general public;

7(2)(11) it interferes in any way with any vehicle that may be parked alongside such place;

7(2)(12) in an area declared under **section 6A(2)(a)** of the Act as a place where the carrying on of the business of street vendor, pedlar or hawker is prohibited.

7(3) No trader may:

7(3)(1) stay overnight at a place of business or trading area, except if the promulgation of the area, specifies that it is also earmarked for night trading;

7(3)(2) create a nuisance;

7(3)(3) damage or deface the surface of a street or any municipal property;

7(3)(4) erect a structure other than an umbrella, without the written authorisation of the municipality;

7(3)(5) create a hazard to traffic;

7(3)(6) attach any object by any means to a building, street furniture, structure, pavement, tree, lamp pole, electrical pole, telephone facility, post box, traffic sign, parking meter or bench;

7(3)(7) make a fire without the written permission of the municipal manager or his delegate;

7(3)(8) fail to move or remove any goods after having been requested to do so by an authorized official;

7(3)(9) accumulate, dump, store or deposit any refuse or waste materials on any land, street, or premises other than in a refuse receptacle approved and provided by the municipality;

7(3)(10) allow the area or stand where business is carried on to become unclean or in an unsanitary condition;

7(3)(11) keep goods in an unclean or unsanitary condition;

7(3)(12) fail, at the conclusion of trading, to remove daily from the place of business or trading area, all waste, packaging material, stock or equipment;

7(3)(13) carry on business in a manner that may pose a threat or danger to public health or safety;

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- 7(3)(14) fail to, at all times, carry on his or her person a copy of any permit or written authorization issued in terms of this by-law and must, on request of an authorized official, produce such authorization;
- 7(3)(15) fail to ensure that any permit or written authorisation is available to his assistants, if he is absent from the trading site for any reason;
- 7(3)(16) fail 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 if his activities involves the cooking or other preparation of food;
- 7(3)(17) carry on business in such a manner that it creates a danger or threat to public health or public safety;
- 7(3)(18) let his property on a public road or in a public place cover an area which is greater than 3m in length and 2m in width, provided that in areas where adequate space is available the space dimensions may be increased to 4m in length and 2m in width;
- 7(3)(19) place his property on a public road or public place, except for purposes of commencing and conducting trade.
- 7(4) Deviations in terms of the provisions of **section 7**, may be allowed, only after application in terms this by-law, is lodged at the Office of the Municipal Manager, which application should include the following:
- 7(4)(1) the full particulars of the applicant;
- 7(4)(2) full particulars of the site applied for;
- 7(4)(3) reasons why said site is appropriate for informal trading;
- 7(4)(4) comments from any adjacent land owners of applicable.

8. PERMITS

- 8(1) No person may conduct the business of informal trading or display his goods for trading in a trading area, without being in possession of a valid permit.
- 8(2) In order to qualify for a permit, the applicant must:
- 8(2)(1) be an informal trader;
- 8(2)(2) may not hold a permit in respect of any other trading area in respect of which the permit is applied;
- 8(2)(3) must be a South African citizen, failing which, they must be in possession of a valid work permit which includes, but is not limited to a refugee permit;
- 8(2)(4) must not employ or actively utilize the services of more than 20 persons.

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- 8(3) The municipality must take into account the following factors when considering the application for a permit:
- 8(3)(1) the applicant's ability to meet the trading hours for the relevant trading area as determined by the municipality;
 - 8(3)(2) the need to give preference to applicants who are regarded as previously disadvantaged individuals;
 - 8(3)(3) where there is a limited number of trading bays available in the trading area, in respect of which the permit is sought, the need to give preference to applicants that would be new entrants to informal trading within the municipal area;
 - 8(3)(4) the nature of the goods which the applicant intends selling or the services the applicant intends rendering, bearing in mind the nature of the specific trading areas as well as the businesses within the immediate vicinity;
 - 8(3)(5) the need to give preference to unemployed persons;
 - 8(3)(6) the need to give preference to applicants who do not share a household with an existing permit holder, unless;
 - 8(3)(6)(1) the number of trading bays for the relevant trading area is more than the number of applicants seeking permits for those trading bays;
 - 8(3)(6)(2) the applicant who shares a household with a permit holder is not a dependant or financially reliant on the permit holder.
 - 8(3)(7) whether the applicant has, in terms of this by-law, or other relevant legislation been convicted of an offence and/or had a permit revoked or suspended.
 - 8(3)(8) whether the applicant is a suitable person to carry on the lawful business at the allocated site, whether by reason of his character, having regard to any conviction recorded against him, or his previous conduct for any reason.
 - 8(3)(9) where the trading plans are adopted in areas previously not subject to such plans, the need to give preference to applicants who have an established informal trading operation in the location for which the new trading area is adopted.
- 8(4) Council is entitled to impose conditions in respect of permits as it deems fit, subject to the provisions of the applicable trading plan, including but not limited to the right to:

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- 8(4)(1) specify the trading hours during which the trading permit holder may trade;
- 8(4)(2) the nature of the goods and services the permit holder is permitted to trade;
- 8(4)(3) the permit holder's trading bay number;
- 8(4)(4) to allocate the informal trader an alternative bay in the same or other trading area;
- 8(4)(5) specify the type of structure(s), if any, which may be erected on the trading bay and/or in the trading area;
- 8(4)(6) impound trading goods in terms of **section 11** and **section 12** in the event of a contravention of any of the provisions in terms of this by-law and/or any other law;
- 8(4)(7) suspend a permit for a special event on reasonable prior notice where practicable to the informal trader, with no compensation payable to the informal trader, notwithstanding that informal trading may be permitted by the municipality at a special event in terms of **section 10**.
- 8(4)(8) on reasonable prior notice to the informal trader and after affording the relevant informal trader an opportunity to make written representations, revoke or suspend a permit in the event of an informal trader:
 - 8(4)(8)(1) breaching any provisions of the permit and/or the by-law or any other law;
 - 8(4)(8)(2) being convicted of trading in illegal goods or providing a service unlawfully, in terms of any legislation;
 - 8(4)(8)(3) wilfully supplying incorrect information when required to provide municipal officials with information;
 - 8(4)(8)(4) being found to be unsuitable as contemplated in **section 8(2)** and **8(3)** to perform trade within a trading area;
- 8(5) Notwithstanding the content of any trading plan, the municipality has the right to, upon reasonable prior notice to the informal trader and with no compensation payable, temporarily:
 - 8(5)(1) relocate the permit holder to another trading area;
 - 8(5)(2) suspend the validity of a permit;
 - 8(5)(3) prohibit the permit holder from trading in the relevant trading bay.

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8(5)(4) should it be necessary to do so due to any performance activities which renders the continuation of trading from the relevant trading bay impractical or severely inconvenient.

8(6) Activities referred to in **section 8(5)** may include, but is not limited to maintenance and construction of any infrastructure or buildings performed by the municipality, property developments, alterations, and refurbishment by any entity, or activities by public entities conducted in terms of their powers or functions.

8(7) Council shall fix the charges payable to it in terms of this section for the authorisation to use bays, stands or stalls in trading areas under its control from where the carrying on of the business of street vendor, pedlar or hawkker is permissible.

9. APPOINTMENT OF ASSISTANTS

9(1) Any permit holder will be allowed to appoint assistants to trade in terms of a permit, issued by the municipality, but subject to prior notification to the municipality and on terms and conditions prescribed by the municipality.

9(2) All prescriptions in this by-law will be applicable to the assistants appointed by the permit holders, as would be the case of the permit holder.

10. SPECIAL EVENTS

Council may permit or prohibit informal trading for purposes of special events on such terms and conditions as it may deem fit, notwithstanding the terms of any trading plan or any permits issued in respect of the relevant trading area.

11. REMOVAL AND IMPOUNDMENT

11(1) An authorized official may remove and impound any goods that a trader failed or remove from a place after having been requested to do so by an authorized official, or which had been left there or abandoned:

11(1)(1) which the authorized official reasonable suspects are used in connection with street trading;

11(1)(2) which is found at a place where the business of street trading is prohibited or restricted in terms of this by-law and which is likely to constitute a contravention in terms of this by-law;

11(1)(3) or in the officers opinion are placed that it causes an obstruction to pedestrians or vehicular traffic or any municipal service or service works.

11(2) An authorized official acting in terms of **section 11(1)**, must:

11(2)(1) except in the case of goods that have been left or abandoned, issue to a trader a receipt for any goods so removed or impounded, and

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11(2)(2) forthwith deliver such goods to a place determined by the municipal Manager or his/her delegated official.

11(3) The owner of goods removed and impounded in terms of **section 11(1)** shall, subject to the provisions of **section 12**, be liable for any expense incurred by the municipality, and the municipality may keep such goods until all such expenses have been paid or deal with the goods as contemplated in **section 12**.

11(4) A certificate issued under the hand of the municipal manager shall be deemed to be proof of any expenses incurred by the municipality.

12. DISPOSAL OF IMPOUNDED GOODS

12(1) Any perishable goods impounded in terms of section 11(1) may at any time be sold or destroyed by the municipal manager, or his/her delegated official and the proceeds of the sale, less any expenses incurred by the municipal manager, shall upon presentation of the receipt contemplated in by section 11(2) be paid to the owner, provided that if such proceeds are not claimed within three months of the date on which the goods concerned were sold, the proceeds shall be forfeited to the municipality.

12(2) The owner of goods impounded in terms of section 11(1) may, in the case where the goods were not destroyed or sold in terms of section 12(1), on production of the receipt contemplated by section 11(2), reclaim the goods, provided that if the goods remain unclaimed after three months, the municipal manager of his/her delegated official, shall have the right to sell the goods and the proceeds shall be forfeited to the municipality.

12(3) When goods are reclaimed in terms of section 12(2), any outstanding expenses incurred by the municipality in connection with the removal and impoundment, must first be paid before the goods are returned.

12(4) In the event of the proceeds of an sale of goods contemplated by this by-law not being sufficient to defray the expenses incurred by the municipality, the owner of such goods will remain liable for the balance of such expenses that are not defrayed by the proceeds from the sale of such goods.

13. APPEALS

Any person who wants to appeal against a decision made in terms of this by-law, may do so in terms of **section 62** of the **Local Government : Municipal Systems Act, 2000 (Act 32 of 2000)**.

14. OFFENCES

14(1) Any person who;

14(1)(1) contravenes or fails to comply with a provision of this by-law;

14(1)(2) ignores, disregards or disobeys a notice, sign or marking displayed or erected for the purposes of this by-law;

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14(1)(3)contravenes or fails to comply with an approval or a condition granted or imposed in terms of this by-law;

14(1)(4)fails to comply with a request to move or remove his property;

14(1)(5)deliberately furnished false or misleading information to an officer or duly authorised employee of the council; or

14(1)(6)threatens, resists, interferes with obstructs an officer or duly authorised employee of the council in the exercise or performance of that officer's or employee's power or duties under this by-law;

shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand (R1 000) or to imprisonment for a period not exceeding three (3) months.

15. APPLICATION

The by-law set out herein is applicable throughout the geographical area of operation of the Stellenbosch Municipality.

16. SHORT TITLE

This by-law will be called the "Informal Traders by-law."