

INFORMAL TRADING BY-LAW

To regulate informal trading by providing mechanisms, procedures, rules and matters connected therewith.

PREAMBLE

WHEREAS section 156(2) and (5) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions; and

WHEREAS Part B of Schedule 4 to the Constitution lists trading regulations as a local government matter; and

WHEREAS the municipality recognises the key role that informal trading plays in poverty alleviation, income generation and entrepreneurial development and, in particular, the positive impact that informal trading has on historically disadvantaged individuals and communities; and

WHEREAS the municipality acknowledges the need to adopt a developmental approach to the informal trading sector in order to create an environment that is conducive to the growth of business in the informal trading sector;

NOW THEREFORE

BE IT ENACTED by the Langeberg Municipality as follows:

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1. DEFINITIONS

In this by-law, unless the context otherwise indicates:-

“approval” means approval by the municipality and “approve” has a corresponding meaning;

“garden” means a garden to which the public has a right of access;

“goods” means any movable property and includes a living thing;

“informal trader” means any person carrying on business, whether as principal, employee or agent, by selling, supplying or offering any goods or the supplying or offering to supply any service for reward, in or from a public place in the municipality, but excludes a newspaper vendor;

"informal trading" means the carrying on of the business as a trader in terms of this by-law;

“intersection” means an intersection as defined in the regulations promulgated in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“litter” means any refuse, object or matter discarded or abandoned by an informal trader or its customers;

“motor vehicle” means a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"municipality" means:-

(a) the Langeberg Municipality, and includes any political structure, political office bearer, agent 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, agent or employee; or

(b) A service provider fulfilling any function or responsibility under this by-law, assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000, (Act No. 32 of 2000) or any other legislation;

“municipal manager” means a person appointed by the Municipality in terms of Section 54 A of the Local Government : Municipal Systems Act, 2000 (Act No. 32 of 2000) and includes any person:-

(a) acting in such position; and/or

(b) to whom any power, function or responsibility contemplated in this by-law has been delegated;

“nuisance” means any act, omission or condition which is offensive or dangerous, or which interferes with the comfort, convenience and peace of other people or which affects, or may affect, the safety of the public;

“official” means an employee who is authorised by the municipality to perform and exercise any or all of the functions and powers contemplated in this by-law;

“park” means a park to which the public has a right of access;

“food” means a foodstuff intended for human consumption as defined in Section 1 of the Foodstuffs, Cosmetics and Disinfections Act, 1972 (Act No 54 of 1972), excluding food referred to in Regulation 14, and raw or unpasteurised milk;

“perishable foodstuff” means any foodstuff as listed in Government Notice No. R. 1183 of 1 June 1990, as amended excluding unprocessed fruit and vegetables;

“permit” means a permit contemplated in section 2;

“premises” includes any land, building, structure, part of a building or of a structure, or any vehicle, vessel or aircraft;

“prescribed” means prescribed by the municipality;

“property”, in relation to an informal trader, means goods in which an informal trader trades, and includes any article, container, vehicle or structure used or intended to be used in connection with informal trading by the informal trader;

“public amenity” means:-

(a) any land, square, camping site, caravan park, swimming pool, public open space, public resort, recreation site, river, dam, nature reserve, zoological, botanical or other garden, or hiking trail, including any portion thereof and any facility or apparatus therein or thereon, which is the property of, or is possessed, controlled or leased by the municipality and to which the general public has access, whether on payment of admission fees or not, but excluding a public road or street;

(b) a building, structure, hall room or office, including any part thereof or any facility or apparatus therein, which is the property of, or is owned, controlled or leased by the municipality and to which the general public has access, whether on payment of admission fees or not; and

(c) a public amenity contemplated in paragraphs (a) and (b) if it is lawfully controlled or managed in terms of an agreement between a person and the municipality;

“public road” means any road, street or thoroughfare or any other place which is used by the public 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;

“roadway” means a roadway as defined in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996);

“sell” includes barter, exchange, hire out, display, expose, offer or prepare for sale, store with a view to sell, or provide a service for reward, and “sale” or “selling” has a corresponding meaning;

“sidewalk” means a sidewalk as defined in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996);

“street furniture” means any furniture or structure installed by the municipality on the street for public use;

“verge” means a verge as defined in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996).

2. PERMITS

- (1) No person may be engaged in trading in or on a public amenity without the necessary permit as set out in this by-law.
- (2) No person may be engaged in trading as set out herein unless it is taking place on a site as described in the permit.
- (3) A single act of selling or offering or rendering of services in or on a public amenity constitutes trading.
- (4) A reference to a person carrying on the business of informal trader includes an employee of the person.
- (5) A permit authorising a person to be engaged in informal trading does not absolve such person from complying with any other applicable legislation.

3. APPLICATION FOR A PERMIT

- (1) A person must apply to the municipality for a permit to conduct informal trading in or on a public amenity.
- (2) The municipality is entitled to levy a fee for:-
 - (a) an application for a permit;
 - (b) a permit for periods specified by the municipality; and
 - (c) an additional fee or tariff for costs incurred or services provided by the municipality.
- (3) In order to qualify for a permit, an applicant:-
 - (a) must not be engaged in business in the formal sector, but be a bona fide informal trader ;
 - (b) may not hold more than one permit in the municipality;
 - (c) must be a South African citizen or must be able to validly work in South Africa if the applicant is not a juristic person;
 - (d) may not employ and/or utilise the services of more than 5 persons.
- (4) A permit must specify the name and identity number of the informal trader, the goods or services which may be sold by the informal trader, the designated site where the holder may sell from and the number of persons employed or utilised by the informal trader.
- (5) An informal trader must supply the names of persons employed or utilised to the municipality.
- (6) The informal trader must have the permit available at the designated site when trading.
- (7) The informal trader and the persons employed or utilised by the informal trader must display an identity tag supplied by the municipality when trading.
- (8) A person who supplies false information for acquiring a permit or contravenes subsections (5), (6) or (7), commits an offence.

4. CONSIDERATION OF AN APPLICATION FOR A PERMIT

(1) When considering an application for a permit, the Municipality may take into account the following factors:-

- (a) the need to give preference to applicants that are historically disadvantaged
- (b) the type of trading goods which the applicant intends to sell or the services which the applicant intends rendering, bearing in mind the existing businesses in that trading area or its immediate vicinity ;
- (c) the need to give preference to unemployed applicants ;
- (d) the conduct of the applicant in the past which includes transgression of informal trading rules and/or other applicable legislation;
- (e) whether the applicant is a permanent resident of the municipality;
- (f) any other criteria which the municipality may deem relevant.

(2) The Municipality has the right, with no compensation payable by the municipality to the informal trader, to –

- (a) relocate an informal trader upon no less than 7 days written notice;
- (b) suspend the validity of a permit for a limited time upon no less than 7 days written notice;
- (c) prohibit an informal trader from trading at the trading site without notice should it be necessary to do so because of activities which renders the continuation of trading from that site unsafe, impractical or inconvenient.

(3) The activities referred to in subsection (2)(c) may include maintenance, construction of infrastructure or buildings by the municipality, property development, alterations or refurbishments by any entity as well as for safety reasons or any reason the municipality may deem appropriate.

5. TRANSFER OF A PERMIT

(1) In the event of the death of a permit holder, a permit may be transferred with the written approval of the municipality on application by a dependant to such dependant or a person acting on behalf of the dependant, who will continue trading until expiry of the permit.

(2) With the written approval of the municipality, a permit may be temporarily transferred to a dependant where an informal trader is incapable of trading because of illness.

(3) An informal trader may not sell or transfer a permit to any other person in any manner.

(4) An informal trader must return the permit to the municipality if the trader no longer wants to trade, or if permission to transfer is refused.

6. RENEWAL OF PERMIT

(1) Any permit issued for a period of one month or longer may be renewed by the permit holder.

(2) The application for renewal must reach the municipality before or on the date for renewal specified on the permit.

(3) The municipality may refuse to renew the permit if the permit holder was issued with warnings for non-compliance with this by-law or found guilty of a transgression of this by-law.

(4) If an application for renewal is received by the municipality after the date specified on the permit, it will be regarded as a new application which may compete with other applications for that site.

7. DEMARCATION OF AREAS FOR INFORMAL TRADING

(1) The municipality may declare any place in its area of jurisdiction to be an area in which informal trading is allowed.

(2) The municipality must by public notice demarcate areas for informal trading and the notice must contain the boundaries of the area or site set aside for informal trading.

(3) The municipality may change the areas contemplated in subsection (1) if the needs and circumstances of residents, informal traders or the municipality demand such reconsideration.

(4) A person who has been granted a permit to trade as an informal trader may only trade in accordance with the conditions set out on the permit.

(5) A person who carries on the business of an informal trader in contravention of the permit granted by the municipality or a notice contemplated in subsection (2), commits an offence.

8. DUTIES OF INFORMAL TRADERS

(1) An informal trader must –

(a) when he or she concludes business for the day, remove his or her property, except if stored in any structure approved and permitted by the municipality, to a place which is not part of a public road or public amenity;

(b) when requested by an official of the municipality or a by a person who has been authorised to provide municipal services, move his or her property so as to permit the official or other person to carry out any work in relation to a public road, public amenity or service;

(c) keep the area or stand occupied by him or her in a clean and healthy condition;

(d) ensure that the area is free of litter at all times, and must, when he or she concludes business for the day, dispose of litter generated by his or her business in receptacles provided by the municipality for the public;

(e) on request by an official of the municipality, move his or her property so as to permit the cleaning of the area where he or she is trading;

(f) regarding the size and location of the area or stand occupied by him or her, –

(i) ensure that the area which he or she uses corresponds with the site indicated on the permit;

(ii) ensure that a space of not less than 1,5 metres is left open between the wall of any business contiguous to which he or she conducts his or her business.

(2) A person who contravenes a provision of subsection (1) commits an offence.

9. PROHIBITED CONDUCT

(1) An informal trader –

(a) may not sleep or stay overnight at the area where he or she is trading, or at the area where another informal trader is trading;

(b) may not place or stack his or her property in such a manner that it –

(i) constitutes a danger to any person or property; or

(ii) is likely to injure any person or cause damage to any property;

(c) may not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;

(d) may not release onto a public road or public amenity or into a storm water drain any fat, oil or grease in the course of conducting his or her business;

(e) may not allow smoke, fumes, noise, smells, or other substance arising from his or her activities to cause a nuisance or pollution of any kind;

(f) may not erect a structure for the purpose of providing shelter, except for a temporary structure to provide shelter against the weather in which case the said shelter must be removed at the end of the day's business;

(g) may not place his or her property on the surface of a public road or in a public amenity;

(h) who conducts his or her business from a vehicle on a demarcated site, may not park the vehicle or trailer in such a manner as to obstruct pedestrian or vehicular traffic and must ensure that he or she complies with the provisions of all traffic legislation;

(i) may not display his or her goods or other property on or in a building, without the consent of the owner, lawful occupier or person in control of such building or property;

(j) may not attach an object by any means to a building, structure, sidewalk, tree, parking meter, lamp, pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public amenity;

(k) may not carry on his or her business in such a manner as to –

(i) create a nuisance;

(ii) damage or deface the surface of a public road or public amenity or public or private property; or

(iii) create a traffic hazard;

(l) may not make an open fire that poses a health or environment hazard to any person or property or to street furniture;

(m) may not, other than in a refuse receptacle approved or supplied by the municipality, accumulate, dump, store or deposit any litter on: –

(i) any land or premises;

(ii) any public road or public amenity; or

(iii) any public or private property;

(n) may not store his or her property in a manhole, storm water drain, public toilet, bus shelter, on the median between traffic lanes or in a tree;

(o) may not carry on such business in a place or area in contravention of any prohibition or restriction imposed by the municipality;

(p) may not trade in front of a formal business in goods that are similar to any goods offered for sale by such formal trader;

(q) may only trade on the allocated site; and

(r) may not cause a nuisance by insisting, begging or intimidating any person to purchase goods.

(2) A person who contravenes a provision of subsection (1) commits an offence.

10. NEWSPAPER VENDORS

(1) Any publisher of a newspaper that sells such newspaper by using vendors in or on a road must enter into an agreement with the municipality regarding the areas where and times during which such sales may be undertaken.

(2) The municipality may determine the hours during which the sale of newspapers in terms of subsection (1) may be undertaken.

(3) The municipality may levy a tariff for the sale of newspapers in or on any road within its area of jurisdiction.

(4) Any publisher or vendor that contravenes the provisions of this section commits an offence.

11. PENALTIES

(1) A person who contravenes or fails to comply with any provisions of this by-law is guilty of an offence and liable on conviction to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

(2) If an informal trader is convicted of an offence in terms of this by-law more than once, the municipality may revoke the permit after giving the informal trader an opportunity to make representations why the permit should not be revoked.

12. RESPONSIBILITY OF INFORMAL TRADERS FOR CONDUCT OF EMPLOYEES

(1) When a person employed or utilised by an informal trader performs an act which contravenes a provision of this by-law, the informal trader is deemed to have committed the contravention, unless he or she proves that-

(a) he or she did not permit such act;

(b) he or she took all reasonable steps to prevent the performance of the act; and

(c) it was not in the course of employment of the person to perform the act which contravened this by-law.

13. APPEAL

A person whose rights are affected by a decision taken under delegated authority in terms of this by-law may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) to the municipal manager within 21 days of the date of the notification of the decision.

14. LIAISON FORUMS

The municipality may establish one or more liaison forums in its community to make it possible for the community to participate in informal trading matters in terms of this by-law.

15. REPEAL OF BY-LAWS

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this by-law.

16. SHORT TITLE AND COMMENCEMENT

This by-law is called *The Langeberg Municipality Informal Trading By-law* and commences on the date of publication in the Provincial Gazette.