Winnie Madikizela-Mandela, South Africa

Informal Trading By-law, 2022

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Informal Trading By-law, 2022
Contents

Chapter 1 – Interpretation 1
1. Definitions 1
2. Interpretation of By-law 4
3. Objectve of By-law 4
4. Application of By-law 4
Chapter 2 – Freedom to trade informally 5
5. Freedom to engage in informal trading 5
Chapter 3 – Informal trading By-law 5
6. Adoption of informal trading policy 5
7. Public participation 6
9. Amendment, revocation and review of informal trading by 7
Chapter 4 – Informal trading on municipal property 7
10. Trading areas and Trading sites 7
11. Trading hours and other conditions 7
12. Prohibition: informal trading on municipal property without permit 7
13. Informal trading permits 7
13. Informal trading fees 9
14. Transfer of informal trading permits 9
15. Removal and suspension of informal trading permits 9
16. Temporary relocation and suspension 9
17. Removal and suspension of informal trading permits 10
Chapter 5 – Restrictions and prohibition on informal trading 10
18. Restricted or prohibited areas 10
19. Restricted conduct: erection of structures 11
20. Restricted conduct: use of the site overnight 11
21. Restricted conduct: location of trading 11
22. Restricted conduct: display and storage of goods 12
23. Restricted conduct: street furniture 12
24. Restricted conduct: fires 12
25. Restricted conduct: litter 12
26. Restricted conduct: attachments 12
27. Restricted conduct: alcohol, sound-emitting devises and electricity 12
28. Restricted conduct: general 13
29. Environmental health 13

30. Temporary relocation 13
31. Special events 14
Chapter 6 – Enforcement 14
32. Lawful instructions 14
33. Recovery of costs 14
34. Removal and impoundment 14
36. Vicarious liability 15
37. Offences 15
38. Penalties 16
39. Exemption from liability 16
Chapter 7 – Miscellaneous provisions 16
40. Delegations 16
41. Appeals 16
42. Repeal of laws and savings 17
43. Transitional provisions 17
44. Short title and commencement 17

Winnie Madikizela-Mandela
South Africa

Informal Trading By-law, 2022

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To provide for the right to engage in informal trading; to establish informal trading areas and informal trading sites on municipal property; to provide for the granting of trading permits to trade on municipal property; to restrict and prohibit informal trading in certain areas; to regulate the conduct of informal traders; to regulate informal trading at special events; to provide for measures to ensure health and safety; to create offences and penalties; to provide for the repeal of laws and savings; and to provide formatters incidental thereto.

WHEREAS the council 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;

WHEREAS the council recognises the need to adopt a developmental approach to informal trading within a well-managed municipal area. This requires that, in managing informal trading, consideration must also be given to—

(a) the promotion of social and economic development;

(b) the promotion of a safe and healthy environment;

(c) municipal planning;

(d) the licensing and control of undertakings that sell food to the public;

(e) the licensing and control of undertakings that sell other legal goods to the public; and

(e) the management of public places and public roads;

WHEREAS the council has competence in terms of Part B of Schedules 4 and 5 of the Constitution relating to such matters as the control of street trading and trading markets

AND WHEREAS the Winnie Madikizela-Mandela Municipal council has competence, in terms of the section 156(2) of the Constitution of the Republic of South Africa, to make and administer by-laws for the effective administration of the matters which it has the right to administer;

NOW THEREFORE the Winnie Madikizela-Mandela Municipal council, acting in terms of section 156 read with Part B of Schedule 5 of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

Chapter 1
Interpretation

1. Definitions

In this By-law, unless the context indicates otherwise—

"**authorised official**" means a person authorised to implement the provisions of this Bylaw, including but not limited to:—

(a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) municipal or South African police officers as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and

(c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"**beach**" means the portion of land above and contiguous to the seashore and includes any grass verge, where such verge exists;

"**beach trading**" means informal trading that is conducted on a beach and includes informal trading in a parking area adjacent to the beach;

"**black person**" means a black person as defined in the Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

"**event**" means an event as defined in the Safety at Sports and Recreational Events Act, 2010 (Act No. 2 of 2010), namely but not limited to sporting, entertainment, recreational, religious, cultural, exhibitional, organizational, filming or similar activities hosted at a stadium, venue or along a route or within their respective precincts;

"**foodstuff**" means foodstuff intended for human consumption as defined in section 1 of the Foodstuff, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972);

"**goods**" means any perishable/non-perishable; movable property displayed or kept by a person in a public place or public road used or intended to be used in connection with carrying on the business of an informal trader.

"**perishable goods**" means goods that are likely to decay or deteriorate in quality over time and certain environmental conditions such food stuff.

"**non-perishable**" means good or items which have longer shelf life and do not require refrigeration.

"**illegal goods**" means—

(a) goods which may not lawfully be sold or bought including, but not limited to, counterfeit goods as defined in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997);

(b) goods that are bought or sold in an unlawful manner; or

(c) goods that have been acquired in an unlawful manner.

"**impound**" means the confiscation of goods, livestock, vehicles and/or mobile containers by Council;

"**impoundment fee**" means the applicable tariff charged, as determined by the council from time to time, for the impounding and storing of goods impounded in terms of this By-law, as well as the disposal or releasing of the impounded goods;

"**informal trader**" means a person who carries on the business of informal trading;

"**informal trading**" means the trading in goods and services in the informal sector by an informal trader in a public road or public place, and which typically includes, not limited to but subject to Council approval, the following types of trading:

(a) beach trading;

(b) street trading;

(c) trading in pedestrian malls/centres;

(d) trading at transport interchanges;

(e) trading in public places;

(f) mobile trading, such as mobile containers and light delivery vehicles;

(g) trading from kiosks, stalls or containers and

(h) trading at special events;

"**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**" includes any container, wrapping or other waste which has been discarded or left behind by an informal trader or by his or her customers;

"**motor vehicle**" means any self-propelled vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"**municipal council**" or "council" means the Winnie Madikizela-Mandela Municipal council, a municipal council referred to in section 157(1) of the Constitution;

"**Municipality**" means the Winnie Madikizela-Mandela Local Municipality, a category C Municipality as envisaged in terms of section 155(1) of the Constitution of South Africa;

"**municipal manager**" means a person appointed in terms of section 54A of the Municipal Systems Act as the head of administration of the municipal council;

"**municipal property**" means property owned by, leased by or under the control of the Municipality;

"**national monument**" means any one of the "public monuments and memorials" as defined in terms of section 2 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999);

"**non-municipal property**" means property that is situated within the area of jurisdiction of the Municipality but which is not owned by, leased by or under the control of the Municipality;

"**nuisance**" means any conduct or behaviour by any person or the use, keeping, producing, by-producing, harbouring or conveying, as the case may be, of any item, substance, matter, material, equipment, tool, plant or animal or causing or creating any situation or condition in or on private property or in a public place or anywhere in the Municipality which causes damage, annoyance, inconvenience or discomfort to the public or to any person, in the exercise of rights common to all or of any person;

"**obstruct**" means to do anything which blocks or is likely to block vehicular or pedestrian traffic flow on a public road, walkways, buildings and/or accessibility, visibility of buildings and structures.

"**once-off event**" means an event that occurs only once annually;

"**park**" means a garden or park to which the public has a right of access, and "garden" has the same meaning;

"**permit-holder**" means an informal trader who has been granted a permit by the Municipality, to conduct informal trading from a designated site situated in an informal trading area on municipal property;

"**prescribed**" means as determined by resolution of the council from time to time;

"**public building**" means a building belonging to or occupied solely by any sphere of the government, including the Municipality;

"**public parking space**" means any space in a public place designated by the Municipality for the parking of a motor vehicle;

"**public place**" means—

(a) a public road;

(b) a public parking space; and

(c) any square, park, recreation ground, sports ground, beach, shopping centre, municipal cemetery, open space, or vacant municipal land which is vested in the Municipality, or in respect of which the public has the right of use, or which is shown on a general plan of a township filed in the deeds registry or a Surveyor-General's office as having been provided for the use of the public or the owners of erven in such township;

"**public road**" means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access as defined in the National Road Traffic Act, 1996 (Act No.93 of 1996)

"**roadway**" means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic, which is between the edges of the roadway, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"**seashore**" means the seashore as defined in the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

"**sell**" means providing a service and/or exchanging goods for reward; includes—

(a) bartering, exchanging or hiring out;

(b) displaying, exposing, offering or preparing for sale;

(c) storing on a public road or in a public place with a view to selling; and

(d) "**selling**" has a corresponding meaning;

"**services**", in relation to an informal trader, includes any advantage or gain given or supplied by the trader in return for consideration or reward;

"**sidewalk**" means that portion of a verge intended for the exclusive use of pedestrians, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"**street trading**" means the selling of goods or the supply of services for reward in a Designated public spaces/verge;

"**verge**" means that portion of a road, street or thoroughfare, including the sidewalk, which is not the roadway on the shoulder, as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996).

2. Interpretation of By-law

If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

3. Objectve of By-law

The objective of this By-law is to regulate informal trading in a manner which—

(a) ensures that informal trading is conducted in an orderly manner;

(b) enables access to job and entrepreneurial opportunities within the informal trading sector;

(c) harmonises the relationship between the informal trading sector and the formal trading sector; and

(d) ensures the health and safety of the public.

4. Application of By-law

This By-law applies to all areas which fall under the jurisdiction of Winnie Madikizela-Mandela Local Municipality and is binding on all persons to the extent applicable.

Chapter 2
Freedom to trade informally

5. Freedom to engage in informal trading

Subject to compliance with the provisions of—

(a) this By-law;

(b) any other applicable law; and

(c) Approved Council informal trading permit,

any person is permitted to engage in informal trading within the area of jurisdiction of the Municipality.

Chapter 3
Informal trading By-law

6. Adoption of informal trading policy

(1) The council may adopt an informal trading policy or amend an existing informal trading policy. The policy may include a strategic plan for the management of informal trade particularly in areas where there—

(a) is a significant overlap between formal and informal trading;

(b) are significant tourist or recreational facilities; or

(c) is a cultural, historical or environmental significance.

(2) An informal trading policy may allow and regulate informal trading on—

(a) municipal property; and

(b) non-municipal property, subject to the rights of the owners of the property.

(3) An informal trading policy may include a plan which—

(a) defines the geographic boundary of an informal trading area;

(b) demarcates informal trading sites; and

(c) demarcates any markets.

(4) The informal trading policy may also deal with any other matters governing informal trading in the informal trading area concerned, including but not limited to—

(a) trading hours;

(b) the manner in which the socio-economic development of the informal traders in the informal trading area will be facilitated;

(c) how tourist, recreational, historical and environmental areas within the informal trading area will be protected; and

(d) how any markets within the informal trading area will operate.

(5) An informal trading policy must comply with the provisions of this By-Law and with any other applicable law.

7. Public participation

(1) Before adopting an informal trading policy, the Municipality must consult with interested and affected persons, including representatives of the informal and formal sectors regarding the contents of any proposed informal trading policy. This consultation process must comply with at least the provisions set out in subsections (2) to (9).

(2) If the Municipality believes that an informal trading policy is desirable for the area concerned, the Municipality must—

(a) compile a draft informal trading policy; and

(b) publish a notice—

(i) informing the public that the draft informal trading policy is available for inspection at a specified location and between specified hours;

(ii) inviting interested and affected persons to attend a public meeting; and

(iii) inviting comments and objections from the public, to be received by the council by a specified date not less than 30 days after the publication of the notice.

(3) The notice referred to in subsection (2) must—

(a) contain a summary of the key aspects of the draft informal trading policy; and

(b) be published—

(i) in 2 local daily newspapers that circulate in the area in which the proposed informal trading area is situated; or

(ii) in a community newspaper, if a community newspaper which is free to the public is circulated in the area in which the proposed informal trading area is situated, and 1 local daily newspaper that is circulated in the area.

(4) At the public meeting, the Municipality must—

(a) present and explain the draft informal trading policy;

(b) reasonably respond to any queries related to the draft informal trading policy;

(c) give interested and effected parties an opportunity to make comments and to lodge objections; and

(d) keep a minute of the meeting.

(5) The Municipality must consider all objections or comments received from the public regarding the draft informal trading policy.

(6) After having considered the comments and objections, the council must, within a reasonable period from the commencement of the public participation process in respect of the relevant draft trading plan—

(a) adopt the draft informal trading policy;

(b) amend and adopt the draft informal trading policy; or

(c) reject the draft informal trading policy.

(7) Notwithstanding the provisions of section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) the council may not delegate the decisionmaking powers referred to in subsections (5) and (6).

(8) If the council adopts an informal trading policy, a notice must be published in the manner contemplated in subsection (3).

9. Amendment, revocation and review of informal trading by

The council—

(a) may amend or revoke an adopted informal trading policy, provided that the council must—

(i) follow the public participation process set out in section 7; and

(ii) afford to any person whose existing rights are adversely affected by a proposed amendment their rights to administrative justice; and

(b) must review informal trading policies from time to time as the council deems fit.

[Please note: Numbering as in original.]

Chapter 4
Informal trading on municipal property

10. Trading areas and Trading sites

(1) The council may, by resolution—

(a) set apart informal trading areas on municipal property within any area designated as an informal trading area in terms of an informal trading policy; and

(b) demarcate informal trading sites within informal trading areas.

(2) The council may, by resolution—

(a) extend, reduce or disestablish any informal trading area or informal trading site; or

(b) lease any verge or any portion of a verge to the owner or occupier of any contiguous land on condition that the owner or occupier must allow a specified number of informal traders to trade from sites on such verge on such terms and conditions as the council may determine.

11. Trading hours and other conditions

The Municipality may when setting apart informal trading areas, or at any time thereafter on reasonable notice, impose—

(a) Trading hours and days; trading hours for street trading are permitted only between 06:00 am and 18:00 pm Monday to Sunday.

and

(b) any other conditions as stipulate by the Municipality, i.e for Special Events and Peak Season Transit, traders may apply for special permission from the Municipality to trade after hours.

12. Prohibition: informal trading on municipal property without permit

No person may conduct informal trading on municipal property without a valid informal trading permit from the Municipality.

13. Informal trading permits

(1) A person may apply for an informal trading permit, to conduct informal trading on municipal property, if that person—

(a) is an informal trader or a person who wants to become an informal trader;

(b) does not already hold a permit in respect of any other informal trading site within the area of jurisdiction of the Municipality;

(c) is a South African citizen or, failing which, has a valid work permit which includes, but is not limited to, a refugee permit;

(d) does not have more than one permit which conducts informal trading; or

(e) is currently unemployed, and on becoming gainfully employed surrender such permit.

(2) An application for an informal trading permit must be on the form prescribed by the Municipality from time to time.

(3) The Municipality must consider any application for an informal trading permit and may—

(a) approve it subject to any conditions the municipality may see fit & reasonable;

(b) request that additional information be furnished within a specified time frame; or

(c) reject the application and provide reasons thereof.

(4) The Municipality may consider the following factors when considering an application for an informal trading permit:

(a) the need to give preference to applicants who—

(i) are black persons;

(ii) are unemployed and/or indigent;

(iii) are entering the informal sector for the first time; and

(v) are physically challenged;

[Please note: Numbering as in original.]

(b) whether the goods which the applicant intends selling, or the services which the applicant intends providing, fit with those sold or supplied by other informal traders in the informal trading area or other traders in the immediate vicinity of the informal trading area;

(c) if the permit holder has repeatedly failed to comply with conditions prescribed by the Council under which the permit was issued in previous applications.

(d) the applicant's ability to meet the trading hours for the relevant informal trading area as the council may determine; and

(5) The Municipality may, when issuing an informal trading permit, impose any reasonable conditions, including but not limited to—

(a) minimum or maximum trading hours;

(b) restrictions regarding the type of goods or services in which the permit-holder is permitted to trade;

(c) an expiry date for the permit; and

(d) conditions regarding the type of structure or structures (movable/immovable), if any,

which may be erected on an informal trading site or in an informal trading area.

(6) An informal trading permit—

(a) must refer to a specified trading bay, as identified by its allocated number, to which the permit relates; and

(b) gives only the permit-holder, the right to use that trading bay subject to the conditions of the permit, the provisions of an applicable informal trading policy and any other conditions imposed in terms of this By-law.

(7) Schools, religious bodies and non-profit organisations are exempted from the requirement of obtaining an informal trading permit for a one-off event.

13. Informal trading fees

The Municipality is entitled to charge—

(a) any informal trading permit-holder, an annual rental in respect of the informal trading site to which the permit relates.

(b) Impoundment fee is standardized at R300 for goods impounded

(c) Storage Fee will remain at R30 per day

[Please note: Numbering as in original.]

14. Transfer of informal trading permits

(1) A permit is non-transferable and may not be leased, sold or otherwise disposed of except with the prior consent of the Municipality in terms of this section.

(2) A permit may, with the prior written approval of the Municipality, be temporarily or permanently transferred to a person nominated by a permit-holder in writing, and subject to the provision of any information which the Municipality may reasonably require from time to time.

(3) If the Municipality consents to the temporary or permanent transfer of an informal trading permit, the—

(a) Municipality may impose such requirements as it deems fit; and

(b) person replacing the permit-holder will be entitled to trade, if the transfer is temporary, for the period of time indicated by the Municipality.

15. Removal and suspension of informal trading permits

The Municipality may, on reasonable notice to an informal trader and after having given the informal trader an opportunity to make written representations, revoke or suspend an informal trading permit if the informal trader has—

(a) breached any conditions of his or her informal trading permit;

(b) breached the provisions of this By-law or of any other law;

(c) been convicted of trading in illegal goods or of providing a service unlawfully; or

(d) been found to have wilfully supplied incorrect information to the Municipality when required to provide that information.

(e) A trading permit will be revoked if the allocated owner of the stall is not utilizing the stall for a period of three (3) month and the stall will be allocated to another trader.

(f) In the instance of death of permit holder, a trading permit lapses.

16. Temporary relocation and suspension

(1) The Municipality may, on reasonable notice to an informal trader, temporarily—

(a) relocate a permit-holder;

(b) suspend the validity of a permit; or

(c) suspend informal trading from an informal trading area or a particular trading site or sites,

if the continuation of trading from an informal trading area or trading site is impractical or inconvenient to the activities of the Municipality, any sphere of government or any public entity, including their respective service providers.

(2) No compensation is payable by the Municipality to an informal trader in the event that—

(a) the trader is relocated;

(b) the permit is suspended; or

(c) trading is suspended from a particular informal trading area or trading site.

(3) No informal trading fee shall be payable during any period where—

(a) the validity of an informal trading permit is suspended; or

(b) informal trading in an informal trading area or from a particular informal trading site is suspended or prohibited, without an alternate site being provided to the permit holder concerned.

17. Removal and suspension of informal trading permits

A permit-holder must immediately return his or her permit to the Municipality when the permit expires or if the—

(a) Municipality revokes the permit;

(b) permit-holder is refused permission to transfer the permit;

(c) permit-holder ceases trading for a period of 30 or more days;

(d) permit-holder no longer wishes to trade as an informal trader from the relevant informal trading site; or

(e) permit-holder becomes employed in the formal sector.

Chapter 5
Restrictions and prohibition on informal trading

18. Restricted or prohibited areas

(1) The council may, by resolution, declare any place in its area of jurisdiction to be an area in which informal trading is restricted or prohibited.

(2) The council may, in restricting or prohibiting informal trade, indicate places where—

(a) informal trading is prohibited; or

(b) informal trade in specified goods or services is prohibited.

(3) The Municipality must erect signs, markings or other devices to indicate the boundaries of—

(a) areas where informal trading is restricted or prohibited (and the nature of any restriction); and

(b) informal trading areas and informal trading sites.

(4) Any sign erected in terms of this By-law or any other law, shall serve as sufficient notice to an informal trader that informal trading is prohibited or restricted in that area.

19. Restricted conduct: erection of structures

An informal trader must not erect any structure, whether movable or immovable, other than a device approved by the Municipality.

(1) Specification of Material and Structure

20. Restricted conduct: use of the site overnight

(1) An informal trader must not sleep overnight at the place where he or she carries on informal trading.

(2) An informal trader must not, on concluding business for the day, leave his or her goods at an informal trading site which is part of a public road or public place, except any structure permitted by the Municipality.

21. Restricted conduct: location of trading

(1) An informal trader must not—

(a) place his or her goods on a public road; or

(i) install furniture that is greater than 2x1 meters in length,

(ii) allow his or her goods or area of activity to exceed an area of a public space which—

is greater than 2x1 meters in area; or

unless otherwise approved by the Municipality;

(c) trade on a sidewalk or verge where the—

(i) width of the sidewalk or verge is less than 3 meters;

(ii) sidewalk or verge is next to a public building, a place of worship such as a church, synagogue or mosque, or a national monument; or bank

(iii) sidewalk is contiguous to a building in which business is being carried on by any person who sells goods of the same or of a similar nature to the goods being sold on such sidewalk by the trader, if that person objects to informal trading taking place at that location;

(d) trade on the half of a verge/sidewalk which is next to a building that is being used for residential purposes.

(e) obscure any road traffic sign displayed in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996), or any marking, notice or sign displayed or made in terms of a by-law;

(f) obstruct vehicular traffic;

(g) obstruct access to a pedestrian crossing, pedestrian arcade or mall;

(h) obstruct access to a vehicle;

(i) obstruct access to refuse disposal bins or other facilities intended for the use of the public;

(j) obstruct access to an automatic teller machine;

(k) obstruct the view of a CCTV camera;

(l) limit access to parking or loading bays or other facilities for vehicular traffic;

(m) trade within 5 metres of an intersection or fire hydrant or any other fire fighting equipment;

(n) trade below the high-water mark; or

(o) trade in a park, unless such area has been declared by the council as an informal trading area.

(2) An informal trader must, in respect of any sidewalk, leave an unobstructed space for pedestrian traffic of not less than—

(a) 2 meters wide when measured from any contiguous building to his or her goods or area of activity; and

(b) 0.5 meters wide when measured from the kerb line to his or her goods or area of activity.

22. Restricted conduct: display and storage of goods

An informal trader must not—

(a) place or stack his or her goods in such a manner that it constitutes a danger to any person or property, or is likely to injure any person or cause damage to any property;

(b) display his or her goods or on behalf of a formal trader in front of a building or shop front.

(c) interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;

(d) place on a public road or public place any goods that are not capable of being easily removed to a storage place at the end of the day's business; and

(e) store or dispose of his or her goods or litter in a manhole, storm water drain, public toilet, bus shelter or under a tree.

23. Restricted conduct: street furniture

An informal trader must not obstruct access to, or the use of, street furniture or any other facility designed for the use of the public.

24. Restricted conduct: fires

An informal trader must not make a fire at any place to prepare foodstuffs by utilising open-flame fire or gas-fired equipment in public spaces, verges, sidewalks.

25. Restricted conduct: litter

(1) An informal trader must dispose of litter generated by his or her informal trading in a refuse receptacle approved or supplied by the Municipality.

(2) An informal trader must not, other than in a refuse receptacle approved or supplied by the Municipality, accumulate, dump, store, deposit, or cause or permit to be accumulated, dumped, stored or deposited, any litter on any land or premises or any public road or public place or on any public property.

26. Restricted conduct: attachments

An informal trader must not attach any of his or her goods by any means to any building, structure, pavement, 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 place.

27. Restricted conduct: alcohol, sound-emitting devises and electricity

An informal trader must not—

(a) sell or promote alcoholic products;

(b) use bells, hooters, amplified equipment or similar devices which emit sound, in order to attract customers; and

(c) use any electrical supply or a power generator, unless expressly approved by the Municipality.

28. Restricted conduct: general

An informal trader must not carry on informal trading—

(a) in a place or area in contravention of any prohibition or restriction imposed by the Municipality; or

(b) in such a manner as to—

(i) create a nuisance;

(ii) damage or deface the surface of any public road or public place, or any public or private property;

(iii) create a traffic or health hazard or a health risk;

(iv) contravene any of the terms and conditions of his or her informal trading permit; or

(v) act in a way which disturbs the reasonable peace, comfort or convenience and well-being of any other person.

29. Environmental health

An informal trader must—

(a) keep the informal trading site or area or occupied by him or her for the purposes of conducting informal trading in a clean and sanitary condition;

(b) keep his or her goods in a clean and sanitary condition;

(c) ensure that, on completion of business each day—

(i) the informal trading site or area occupied by him or her for the purposes of conducting informal trading is free of litter and other waste; and

(ii) all his or her goods are collected and removed from any public road or public place and stored in a suitable facility;

(d) take necessary precautions in the course of conducting his or her business as may be necessary to prevent the spilling of fat, oil or grease onto a public road, or public place, or into a storm water drain;

(e) ensure that no smoke, fumes or other substance, odours, or noise, emanating from his or her activities associated with informal trading, causes pollution of any kind;

(f) carry on business in a manner which does not cause a threat to public health or public safety; and

(g) at the request of an authorised official of the Municipality, move or remove any object so that the area or informal trading site from which informal trading is conducted may be cleaned.

30. Temporary relocation

An informal trader must, on request by an authorised official or a service provider appointed by the Municipality, move his or her goods so as to permit the carrying out of any work in relation to a public road, public place or any municipal authorized work.

31. Special events

(1) The Municipality may, on reasonable notice, prohibit or restrict informal trading for the duration of a special event and within a prescribed area, notwithstanding the provisions of any informal trading policy or any informal trading permit.

(2) No compensation is payable by the Municipality to any informal trader as a result of the prohibition or restriction of informal trading as contemplated in subsection (1).

(3) No informal trading fee shall be payable by an informal trader during any period during which informal trading is prohibited or restricted.

Chapter 6
Enforcement

32. Lawful instructions

Failure to comply with a lawful request of an authorised official is a contravention of this By-law.

33. Recovery of costs

(1) If an informal trader contravenes any provision of this By-law, an applicable informal trading policy or his or her permit and fails or refuses to cease the contravention, or to take steps to rectify any contravention, then the Municipality may take those steps itself and recover the costs from the informal trader.

(2) The costs mentioned in subsection (1) is in addition to any fine which may be imposed on the informal trader.

34. Removal and impoundment

(1) An authorised official may remove and impound any goods of an informal trader which he or she reasonably suspects is being used, has been used or is intended to be used for or in connection with informal trading which is in contravention of this By-law or any other applicable law.

(2) The removal and impoundment of goods in terms of subsection (1) may be carried out irrespective of whether or not such goods are in the possession or under the control of any third party at the time.

(3) Any authorised official who removes and impounds goods in terms of subsection (1) must, except where goods have been left or abandoned, issue the informal trader a receipt which—

(a) itemises the goods to be removed and impounded;

(b) provides the address where the impounded goods will be kept;

(c) states the period of impoundment;

(d) states the terms and conditions which must be met to secure the release of the impounded goods;

(e) states the impoundment fee to be paid to secure release of the impounded goods;

(f) states the terms and conditions on which unclaimed goods will be sold or otherwise disposed of; and

(g) provides the name and address of a municipal official to whom any representations regarding the impoundment may be made and the date and time by which representations must be made.

(4) If any goods to be impounded are attached to immovable property or a structure, an authorised official may order any person who appears to be in control of the immovable property or structure to remove the goods to be impounded and, if that person refuses or fails to comply, then—

(a) that person shall be guilty of an offence; and

(b) the authorised official may remove the goods himself or herself.

(5) Goods which have been impounded may be released after—

(a) proof of ownership in the form of the presentation of the receipt contemplated in subsection (3); and

(b) payment of the impoundment fee, is received.

(6) The Municipality may after 60 days of the impoundment sell, destroy or otherwise dispose of—

(a) impounded perishable goods if the goods represent or might represent a health risk or a nuisance; and

(b) foodstuffs which are unfit for human consumption.

(c) perishables may be stored by the Municipality for a period not exceeding 5 days before being disposed and refrigerated items not exceeding 2 days.

(7) Impounded goods other than perishable goods, may be sold by the Municipality if the owner does not, or is unable to, pay the impoundment fee within 1 month from the date of impoundment of those goods.

(8) If impounded goods are sold by the Municipality in terms of subsections (6) or (7), and upon the presentation of the receipt contemplated in subsection (3) as proof of ownership, the Municipality must pay to the person presenting the inventory the proceeds of the sale less the impoundment fee.

(9) If in the reasonable opinion of an authorised official, an informal trader is suspected of trading in illegal goods, then those goods may be immediately confiscated and, in the event of such a confiscation, the authorised official must—

(a) comply with the requirements of this section; and

(b) immediately surrender the suspected illegal goods to the possession of the South African Police Service.

36. Vicarious liability

(1) When an informal trader contravenes a provision of this Bylaw, any informal trading policy or informal trading permit, the informal trader shall be deemed to have committed such contravention himself or herself unless such informal trader satisfies the court that he or she took reasonable steps to prevent such contravention.

(2) The fact that the informal trader issued instructions the employee or agent, prohibiting such contravention, shall not in itself constitute sufficient proof of such reasonable steps.

37. Offences

(1) A person is guilty of an offence if he or she—

(a) trades without an informal trading permit;

(b) contravenes any provision of this By-law;

(c) contravenes any condition on which a permit has been issued to him or her;

(d) contravenes any provision of an applicable informal trading policy;

(e) fails to comply with any lawful instruction given in terms of this By-law;

(f) threatens, resists, interferes with or obstructs any authorised official in the performance of official duties or functions in terms of or under this By-law; or

(g) deliberately furnishes false or misleading information to an authorised official.

(2) A person is guilty of a continuing offence if he or she continues with an offence after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence, or after he or she has been convicted of such offence.

38. Penalties

(1) Any person who is convicted of contravening paragraph 37(1)(a) shall be liable to a fine of an amount not exceeding R300 or to imprisonment for a period not exceeding 3 months, or to both such fine and imprisonment.

(2) In the case of a continuing offence, an additional fine of an amount not exceeding R600 or imprisonment for a period not exceeding 10 days, for each day on which such offence continues or both such fine and imprisonment, will be imposed.

39. Exemption from liability

The Municipality shall not be liable for damages or compensation arising from anything lawfully done in good faith by it or any authorised official or employee thereof in terms of this By-law.

Chapter 7
Miscellaneous provisions

40. Delegations

(1) Subject to the Constitution and applicable national and provincial laws, any—

(a) power, excluding a power referred to in section 160(2) of the Constitution;

(b) function; or

(c) duty, conferred, in terms of this By-law, upon the council, or on any of the Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor, or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) The delegation in terms of subsection (1) must be effected in accordance with the system of delegation adopted by the council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), subject to the criteria set out in section 59(2) of said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the—

(a) entity or person issuing the delegation or sub-delegation;

(b) recipient of the delegation or sub-delegation; and

(c) conditions attached to the delegation or sub-delegation.

41. Appeals

(1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local

Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority.

(3) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.

(5) The appeal authority must furnish written reasons for its decision on all appeal matters.

(6) All appeals lodged are done in terms of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and not in terms of this By-law.

(7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsection (1) to (5).

42. Repeal of laws and savings

(1) Any By Laws relating to informal trading adopted by the Municipal Council now comprising an administrative unit of the Municipality shall be repealed from the date of promulgation of this By Law.

43. Transitional provisions

Notwithstanding the enactment of this By-law—

(a) any declaration of an area within the jurisdiction of the Municipality as an area in which the carrying on of the business of street vendor, peddler or hawker may be restricted or prohibited, shall remain valid until such time as the council adopts an informal trading policy in respect of such area in terms of this By-law;

(b) where an informal trader had been issued with a lease or permit prior to the enactment of this By-law which permits trading from a particular site, such lease or permit shall remain valid until a new permit system is adopted by the council which complies with the permit system as contemplated in this By-law.

44. Short title and commencement

This By-law is called the Winnie Madikizela-Mandela Municipality: Informal Trading By-law, 2022 and takes effect on the date on which it is published in the *Provincial Gazette* of Eastern Cape