

eThekweni, South Africa

Informal Trading

Legislation as at 27 June 2014

FRBR URI: /akn/za-eth/act/by-law/2014/informal-trading/eng@2014-06-27

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PDF created on 28 June 2024 at 12:28.

Collection last checked for updates: 28 June 2024.

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Informal Trading

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eThekweni South Africa

Informal Trading By-law, 2014

Published in KwaZulu-Natal Provincial Gazette 1173 on 27 June 2014

Commenced on 27 June 2014

[This is the version of this document as it was from 27 June 2014 to 4 December 2019.]

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 for matters 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; 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, trading, markets and beaches;

AND WHEREAS the eThekweni 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 eThekweni 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 metropolitan 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 sporting, entertainment, recreational, religious, cultural, exhibitional, organisational 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 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 and includes any article, container, vehicle, movable structure or living thing;

"high-water mark" means the high water mark as defined in the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

"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.

"impoundment fee" means the applicable tariff charge, 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, without limitation, the following types of trading:

- (a) beach trading;
- (b) street trading;
- (c) trading in pedestrian malls;
- (d) trading at markets or flea markets;
- (e) trading at transport interchanges;
- (f) trading in public places;
- (g) mobile trading, such as caravans and light delivery vehicles;
- (h) trading from kiosks, stalls or containers;

- (i) car wash;
- (j) hair dressing;
- (k) photography;
- (l) roving traders, including without limitation, trading from trolleys; and
- (m) 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);

"kerb line" means the boundary between the shoulder and the verge or, in the absence of a shoulder, the part between the edge of the roadway and the verge, as defined in section 1 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;

"market" means an area within an informal trading area which is designated as a market on an informal trading plan and which is managed in a co-ordinated manner;

"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 eThekweni municipal council, a municipal council referred to in section 157(1) of the Constitution;

"Municipality" means the eThekweni Municipality, a category A Municipality as envisaged in terms of section 155(1) of the Constitution of South Africa and established in terms of Provincial Notice No. 43 of 2000 (KZN);

"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;

"one-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, 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 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" 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) providing a service for reward,

and "sale" or "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;

"shoulder" means that portion of the road, street or thoroughfare between the edge of the roadway and the kerb line, as defined in the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"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 public road; and

"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. Objects of By-law

The object 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 the eThekweni 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) any applicable informal trading permit,

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

Chapter 3 Informal trading policy

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) The public meeting referred to in subsection (2) must be held#
 - (a) within the informal trading area concerned or within 5 kilometres of the boundary of the proposed informal trading area; and
 - (b) not less than 7 days or more than 60 days after the date of the publication of the notice referred to in subsection (2).
- (5) 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.
- (6) The Municipality must consider all objections or comments received from the public regarding the draft informal trading policy.
- (7) 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.
- (8) 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 decision-making powers referred to in subsections (6) and (7).
- (9) If the council adopts an informal trading policy, a notice must be published in the manner contemplated in subsection (3).

8. Amendment, revocation and review of informal trading policy

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.

Chapter 4

Informal trading on municipal property

9. 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.

10. 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 days and hours; and
- (b) any other conditions.

11. 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.

12. 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 employ more than 10 persons;
 - (e) does not have an interest in more than 1 entity or partnership which conducts informal trading; or
 - (f) 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;
 - (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 take into account 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;
 - (iii) are entering the informal sector for the first time;
 - (iv) do not share a household with an existing permit-holder, unless the applicant is not a dependant on or financially reliant upon that permit-holder; and
 - (v) are physically challenged;
 - (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) whether the applicant has, in the two year period prior to his or her application, been convicted of an offence relating to informal trading or has had his or her informal trading permit revoked or suspended;
 - (d) the applicant's ability to meet the trading hours for the relevant informal trading area as the council may determine; and
 - (e) whether the applicant is registered as a tax payer with the South African Revenue Service and is in good standing with the South African Revenue Service.
- (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, 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, and his or her employees, 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 person who applies for an informal trading permit, an application fee on submission of each application for an informal trading permit; and
- (b) any informal trading permit-holder, an annual rental in respect of the informal trading site to which the permit relates.

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.

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 permitholder 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 25 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 prohibitions 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.

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 public place, with the exception of his or her motor vehicle or trailer from which informal trading is conducted: provided that such motor vehicle or trailer does not obstruct pedestrian or vehicular traffic movement and complies with the provisions of the National Road Traffic Act, 1996 (Act No. 93 of 1996);
 - (b) allow his or her goods or area of activity to cover an area of a public road or a public place which#
 - (i) is greater than 6 square meters in area; or
 - (ii) is greater than 3 meters in length, 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

- (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 public road which is next to a building that is being used for residential purposes, if the owner or occupier of that building objects to informal trading taking place at that location;
 - (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 on or in a building, without the consent of the owner, lawful occupier, or person in control of such building or property;
- (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 in 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 unless authorised to prepare foodstuffs by utilising open-flame fire or gas-fired equipment and, where the informal trader is authorised to make a fire, he or she must not make a fire in circumstances where it could harm any person or damage any building, structure, vehicle or other property.

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 devices 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 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.

32. Obligation of owners on non-municipal property

An owner of non-municipal property must –

- (a) ensure that any informal trading taking place on his or her property complies with this By-law;
- (b) permit any authorised official access to his or her property for the purpose of ensuring compliance with this By-law; and
- (c) ensure, at the owner's cost, that sufficient services are provided to maintain acceptable hygienic conditions in respect of the informal trading.

Chapter 6 Enforcement

33. Lawful instructions

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

34. 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.

35. 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 at any time after 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.

- (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 employee or agent of 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 to 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 R5 000 or to imprisonment for a period not exceeding 1 year, or to both such fine and imprisonment.
- (2) Subject to subsection (1), any person who is convicted of an offence under this By-law shall be liable to a fine of an amount not exceeding R1 000 or to imprisonment for a period not exceeding 6 months, or to both such fine and imprisonment.

- (3) In the case of a continuing offence, an additional fine of an amount not exceeding R150 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) The laws mentioned in the first and second columns of the Schedule to this By-law are hereby repealed to the extent set out in the third column of the said Schedule.
- (2) All permits issued under the eThekweni Municipality Street Trading By-laws published under Municipal Notice 97 of 1995 remain in full force and effect as if the said By-law has not been repealed as contemplated in subsection (1).
- (3) Any rights accrued or obligations incurred as contemplated in the laws referred to in subsection (2) remain in force, as if those laws have not been repealed.

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 eThekweni Municipality: Informal Trading By-law, 2014 and takes effect on the date on which it is published in the Provincial Gazette of KwaZulu-Natal.

Schedule

Repealed By-laws

Part A – By-laws

Number and year of law	Title	Extent of repeal
Municipal Notice No. 97 of 1995	Street Trading By-laws, eThekweni Municipality	The whole
Municipal Notice No. 28 of 1997	By-laws Relating to the Carrying on of the Business of Street Vendor, Pedlar or Hawker, South Local Council	The whole

Number and year of law	Title	Extent of repeal
Provincial Notice No. 208 of 1937	General By-laws, Amanzimtoti Local Administration and Health Board Area	Section 9
Provincial Notice No. 30 of 1954	Yacht Bank By-laws, City of Durban	Section 10(f)
Provincial Notice No. 237 of 1941	Regulations of the Purposes of the Local Health Commission (Public Health Areas Control) Ordinance	Chapter 2 and Section 7
Municipal Notice No. 14 of 2009	2010 FIFA World Cup South Africa By-law, eThekweni Municipality	Chapter 6 and Section 7.5