Drakenstein, South Africa

Informal Trade By-law, 2007

Legislation as at 16 March 2007

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Informal Trade By-law, 2007
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Drakenstein
South Africa

Informal Trade By-law, 2007

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

1. Definitions

In this by-law, words used in the masculine gender include the feminine; the singular includes the plural and vice versa; the Afrikaans text shall prevail in the event of an inconsistency between the different texts; and, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Businesses Act, 1991 (Act 71 of 1991) shall have that meaning, and—

"**goods**" means any wares, articles, receptacles, vehicles or structures;

"**municipal service**" means a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether—

(a) such a service is provided, or to be provided, by the municipality through an internal mechanism contemplated in section 76 or by engaging an external mechanism contemplated in section 76; and

(b) fees, charges or tariffs are levied in respect of such a service or not;

"**municipality**" means the Municipality of Drakenstein established in terms of section 12 of the Local Government; Municipal Structures Act, 1998 (Act 117 of 1998), Provincial Notice 488 dated 22 September 2000 and includes any political structure, political office-bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub delegated to such political structure, political office-bearer, councillor, agent or employee;

"**nuisance**" means any conduct which brings about or may bring about a state of affairs or condition which constitutes a source of danger to a person or the property of others or which materially interferes with the ordinary comfort, convenience, peace or quiet of other people;

"**officer**" means—

(a) a traffic officer appointed under section 3A of the National Road Traffic Act, 1996 (Act 93 of 1996);

(b) a member of the Force as defined in section 1(1) of the Police Act, 1958 (Act 7 of 1958);

(c) a peace officer contemplated in section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);

"**person carrying on the business of street vendor, pedlar or hawker**" includes any employee of such person;

"**public road**" means any road, street, thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or a 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;

"**sidewalk**" means that portion of a verge intended for the exclusive use of pedestrians;

"**the Act**" means the Businesses Act, 1991 (Act 71 of 1991);

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

(2) For the purposes of the provision of this by-law a person carrying on the business of street vendor, pedlar or hawker shall include any employee of any such person.

[Note: numbering as in original]

2. Prohibition of and restriction on the carrying on of business

No person shall carry on the business of street vendor, pedlar or hawker—

(a) in a garden or park under the control of the municipality and to which the public has a right of access unless such area has been set apart and demarcated by the municipality for the purpose in terms of section 6A(3)(b) of the Act;

(b) on a verge contiguous to—

(i) a building belonging to, or occupied solely by, the State or the municipality;

(ii) a church or other place of worship; or

(iii) a building declared to be a national heritage site in terms of the National Heritage Resources Act, 1999 (Act 25 of 1999);

(c) in an area declared by the municipality in terms of section 6A(2)(a) of the Act as a place where the carrying on of the business of street vendor, pedlar or hawker is—

(i) prohibited, or

(ii) contrary to any restriction imposed by the municipality in terms of that section in respect of such area;

(d) at a place where—

(i) it obstructs access to a fire hydrant;

(ii) it obstructs access to any entrance to or exit from a building;

(iii) it prevents pedestrians from using, or substantially obstructs them in their use of a sidewalk;

(iv) it causes an obstruction on a roadway;

(v) it limits access to parking or loading bays or other facilities for vehicular traffic;

(e) on that half of a public road contiguous to a building used for residential purposes if the owner, occupier or person in control of the building objects thereto;

(f) at a place where—

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

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

(iii) it obstructs access to a pedestrian crossing;

(iv) it obstructs access to any vehicle;

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

(vi) it interferes in any way with any vehicle that may be parked alongside such place.

3. General

No person carrying on the business of street vendor, pedlar or hawker shall at any time—

(a) in any way obstruct access to any municipal service;

(b) at any public road or public place—

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

(ii) erect any structure (other than a device which operates in the same manner as, and is shaped like an umbrella) for the purpose of providing shelter'

without the written approval of the municipality;

(c) carry on such business in a manner which—

(i) creates a nuisance to other people;

(ii) damages or defaces the surface of any public road or public place or other municipality property; or

(iii) creates a traffic hazard;

(d) attach any object 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;

(e) make a fire at a place or in circumstances where it could harm any person or damage a building or vehicle or any street furniture referred to in subsection (d);

(f) fail or refuse to move or remove any goods, after having been requested to do so by the supplier of a telecommunication service who requires access to such service, orby an authorised employee or agent ofthe municipality or an officer respectively acting in terms of section 4 or 5 of this by-law.

4. Cleanliness of place of business

No person carrying on the business of street vendor, pedlar or hawker shall —

(a) accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any refuse, scrap or waste material on any land or premises, in any manhole, storm water drain or on any public road or public place, other than in a refuse receptacle approved by the municipality;

(b) keep the area or site occupied by him or her for the purpose of such business in an unclean and/or unsanitary condition;

(c) keep his or her goods in an unclean and/or unsanitary condition;

(d) unless written approval, exempting him or her from the provisions of this paragraph has been given by the municipality, fail or remove daily from any public road or public place at the conclusion of trading all waste, packaging material, stock and equipment of whatsoever nature which are utilised in connection with such business;

(e) carry on his business in such a manner as to be a danger or threat to public health or public safety; and

(f) at the request of an officer or a duty authorised employee of the Municipality, fail to move or remove anything so that the area or site may be cleaned.

5. Removal and impoundment

(1) An officer may, after a person carrying on the business of street vendor, pedlar or hawker has failed or refused to comply with a request to move or remove his goods, or has left such goods unattended for a period of 12 hours or more, remove and impound any goods—

(a) which he or she reasonably suspects are being used or intended to be used or have been used, in or in connection with the carrying on of the business of street vendor, pedlar or hawker, and

(b) when he or she finds at a place where such business is restricted or prohibited in terms of sections 2(a) to (c) of this by-law and which, in his or her opinion constitutes an infringement of any section thereof.

(2) An officer so acting shall—

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

(b) forthwith deliver such goods to the municipality.

(3) (a) The owner of any goods which have been removed and impounded in terms of subsection (1) shall be liable for any expenses incurred by the municipality in connection with the removal and impoundment ofsuch goods, and the municipality may keep such goods until all such expenses have been paid or deal with such goods as is contemplated by section 6 of this by-law.

(b) A certificate issued by the municipality shall be deemed to be proof of any expenses that the municipality has incurred in connection with the removal and impoundment of any goods.

(c) The municipality shall not be liable for any loss or theft of or damage to any goods removed and impounded in terms of this section.

6. Disposal of impounded goods

(1) Any perishable goods removed and impounded in terms of section 5(1) may at any time after the impoundment thereof be sold or destroyed by the municipality and in the case of a sale of such goods the proceeds thereof, less any expenses incurred bye the municipality in connection with the removal and impoundment of goods, shall upon presentation of the receipt contemplated by section 5(2)(a), be paid to the person who was the owner of such goods when such goods were impounded. If such owner fails to claim the said proceeds within three months of the date on which such goods were sold, such proceeds shall be fortified to the municipality.

(2) The owner of any goods (other than perishable goods already dealt with by the municipality in terms of subsection (1)) impounded in terms of section 5(1) who wishes to claim the return of such goods shall, within a period of one month of the date of the impoundment of such goods, apply to the municipality and shall present the receipt contemplated in section 5(2)(a), failing which such goods may be sold by the municipality, and in the event of a sale of such goods the provisions of subsection (1) relating to the proceeds of a sale likewise apply to the proceeds of such sale.

(3) If the owner of any goods impounded in terms of section 5(1) claims the return of such goods from the municipality and such owners is unable or refuses to refund any expenses incurred by the municipality in connection with the removal and impoundment of such goods, such goods may be sold by the municipality and the proceeds of any sale of such goods less any such expenses shall be paid to such owner.

(4) In the event of the proceeds of any sale ofgoods contemplated by this section not being sufficient to defray any expenses incurred by the municipality in connection with the removal and

impoundment ofsuch goods, the owner ofsuch goods shall in terms of section 5(3)(a) remain liable for so much of such expenses as is not defrayed by the proceeds from the sale of such goods.

7. Demarcated stand or areas

If the municipality has set apart and demarcated any stand or area for the purposes of the carrying on of the business of street vendor, pedlar or hawker as contemplated in section 6A(3)(b) of the Act, no person may trade on such stand or area unless he is in possession of proof that he has hired such stand or area from the municipality or that it has otherwise been allocated to him.

8. Carrying and exhibiting of written approval

Any person carrying on the business of street vendor, pedlar or hawker shall carry on his or her person any written approval granted or issued to him or her by the municipality in terms of sections 2, 3, 4 or 6 of this by-law and must on request by an officer exhibit such approval.

9. Signs indicating restricted or prohibited areas

The municipality may design or make and display signs, markings or other devices indicating restricted or prohibited areas.

10. Charges

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

11. Offences and penalties

Any person who—

(a) contravenes any provision of this by-law or fails to comply with any condition imposed in terms thereof;

(b) threatens, resists, interferes with or obstructs any officer or any employee of the Municipality in the performance of his or her duties or functions in terms of or under this by-law; or

(c) deliberately furnishes false or misleading information to an officer or an employee of the Municipality;

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

12. Repeal of by-laws

The by-laws listed in Annexure A are hereby repealed to the extent indicated in column three thereof.

13. Short title and commencement

This by-law shall be known as the By-law relating to Informal Trade and comes into operation on the date of publication therof in the *Provincial Gazette*.

Annexure A

By-laws of the disestablished municipality of Paarl		
PN No.	**Short title**	**Extent of repeal**
526/1985	Hawkers and Pedlars	The whole
391/1996	Hawkers	The whole
By-laws of the disestablished municipality of Wellington		
284/1951	Hawkers	The whole
By-laws of the disestablished municipality of Tulbagh		
223/1960	Hawkers and Pedlars	The whole
332/1997	Informal Trade	The whole