Drakenstein, South Africa

Informal Trading By-law, 2023

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Drakenstein
South Africa

Informal Trading By-law, 2023

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Assented to on 18 August 2023

Commenced on 23 August 2023

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By virtue of the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, Drakenstein Municipality hereby enacts as follows—

1. Definitions

(1) In this bylaw, the English 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—

"**authorised official**" means—

(a) A traffic officer appointed in terms of section 3A of the National Road Traffic Act No. 93 of 1996;

(b) A member of the Service as defined in section 1 of the South African Police Service Act, 1995, (Act 68 of 1995);

(c) A peace officer contemplated in section 334 of the Criminal Procedure Act, No. 51 of 1977; or

(d) An employee of the municipality who is appointed or authorised thereto by the municipality to perform any act, function or duty related to the provisions of this bylaw or to exercise any power in terms of this by-law.

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

"**informal trader**" means a person, or an enterprise which is not registered or incorporated in terms of the corporate laws of South Africa and which engages in informal trading;

"**informal trading**" means the trading in goods and services in the informal sector and which typically constitutes the types of trading described in section 5 of this by-law;

"**illegal goods**" means goods that are illegal to sell or to buy, including but not limited to counterfeit goods as defined in the Counterfeit Goods Act, 1997 (Act 37 of 1997);

"**impoundment costs**" means all costs incurred by the municipality in impounding and storing property impounded in terms of section 15, and, where applicable, the costs incurred as a result of the disposal or releasing of the impounded property and any other associated costs;

"**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 of the Municipal Systems Act, 2000 (Act 32 of 2000) or by engaging an external mechanism contemplated in the said section; 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;

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

"**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;

"**public amenity**" means—

(a) any land, commonage, square, camping site, swimming bath, river, public resort, recreation site, nature reserve, zoological, botanical or other garden, park or hiking trail which is the property of the municipality, including any portion thereof and any facility or apparatus therein or thereon;

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

but excluding—

(a) any public road or street;

(b) any public amenity contemplated in paragraphs (a) and (b), if it is lawfully controlled and managed in terms of an agreement by a person other than the municipality; and

(c) any public amenity hired from the municipality.

"**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;

"**services**" means various intangible business activities offered by informal traders, such as hair dressing, tailors, laundry services, catering and landscaping;

"**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);

"**trading area**" means an area set apart and demarcated in terms of section 6(2) of this By-law;

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

(2) For the purposes of this by-law a person carrying on the business of informal trader shall include any employee or agent of such informal trader.

2. Purpose of bylaw and fundamental principles

(1) The municipality recognises the key role that informal trading plays in poverty alleviation, income generation and entrepreneurial development and, in particular, the positive impact that informal trading has on historically disadvantaged individuals and communities.

(2) The municipality acknowledges the need to adopt a developmental approach to the informal trading sector in order to create an environment that is conducive to the growth of businesses in the informal trading sector.

(3) The municipality acknowledges the right of informal traders to trade in line with the constitution and in compliance with applicable legislation;

(4) The municipality also recognizes infrastructural, social, and economic disparities and inequalities that may exist and shall strive to overcome such disparities and inequalities by differentiating, where appropriate, between communities and geographical areas.

(5) The municipality recognizes the existence of the historical non-demarcated informal trading sites. It takes cognizance of the relevant legislative frameworks when facilitating access to suitable infrastructure within the local government content. In respect of historical non-demarcated informal trading sites, the municipality will endeavour to ensure that informal traders have reasonable access to a dignified enabling environment, in areas where it is feasible in accordance with relevant policies, acts and circumstances to trade. Consideration of applications for utilization of these sites will be facilitated subject to engagement with all relevant authorities including the relevant road authority. Clear guidelines will be provided to officials who manage informal trade in the municipality to ensure that policy guidelines are adhered to.

(6) The approval of these sites will be facilitated subject to engagement with the relevant road authority to ensure that informal traders are afforded their constitutional right to be allowed to trade. Clear guidelines will be provided to officials who manage informal trade in the municipality to ensure that policy guidelines are adhered to.

(7) This bylaw accordingly aims to provide mechanisms for the regulation and management of informal trading within the jurisdictional are of the municipality.

(8) This bylaw accordingly aims to provide mechanisms for the regulation and management of informal trading within the jurisdictional are of the municipality.

3. Freedom to trade

Informal trading is permitted within the jurisdictional area of the municipality, subject to any trading policy adopted by the municipality, the provisions of this ByLaw and any other applicable legislation.

4. Adoption of trading management policy

(1) The municipality must adopt a trading management policy which must provide for matters governing informal trading in the municipal area, including, but not limited to—

(a) prescribing informal trading conditions, including such terms and conditions to be imposed in terms of permits to be issued by the municipality and subject to any requirements of this bylaw;

(b) the manner in which social and economic development will be promoted through the policy;

(c) ensuring equal treatment of informal traders and prevention of unfair discrimination with particular reference to foreign nationals, refugees or asylum seekers;

(d) facilitating access to basic facilities or infrastructure for informal traders, if feasible;

(e) promoting regular engagement with informal traders through various platforms and the facilitation of capacity building and skills development programmes for informal traders;

(f) the provision of clear guidelines to enforcement officials on the execution of their powers and functions in terms of the bylaw and other applicable legislation; and

(g) the manner in which sensitive heritage and environmental areas within the trading areas will be protected.

(2) Before adopting a policy as contemplated in subsection (1), the municipality must consult interested and affected parties, including formal business and the informal trading sector.

5. Types of informal trading

Informal trading may include—

(a) street trading - trading on sidewalks or roads;

(b) trading in pedestrian malls; - trading in areas reserved for pedestrian-only use;

(c) trading at markets; - trading in formal markets mainly over weekends;

(d) trading at intersections - trading in newspapers and other goods at traffic intersections;

(e) trading in public amenities - trading in any type of merchandise in municipal parks, sportsgrounds or other amenities;

(f) mobile trading - trading from caravans, trailers, light delivery vehicles or a trolley or similar device;

(g) roving traders - traders who move around form place to place in the municipal area on a daily basis;

(h) trading at special events - trading at special events such as festivals or large gatherings of people; and

(i) weekend trading and special day trading-traders who trade only over weekends or at days of social grant payouts.

6. Trading areas and demarcation

(1) Notwithstanding the provisions of section 2, the municipality may, in terms of section 6A(2)(a) of the Act, by resolution declare any place in its area to be an area in which the carrying on of the business of informal trader may be restricted or prohibited.

(2) The municipality may, in terms of section 6A(3)(b)(i) of the Act, set apart and demarcate stands or areas for informal trading, which areas must be clearly marked to indicate their size and boundaries.

7. Trading permits and fees

(1) No person may conduct informal trading on municipal property without a valid permit issued by the municipality.

(2) The municipality is entitled to charge a permit holder—

(a) a trading fee;

(b) an application fee; and

(c) an additional fee or tariff, in respect of additional costs incurred or services provided by the municipality.

(3) A person who wishes to carry on the business of informal trader must apply to the municipality in the form prescribed in the Informal Trading Management Policy and such application must be considered against the criteria set out in the said policy.

(4) The municipality must provide the applicant with reasons for its decision when an application is refused.

(5) A permit to trade must be kept at the place of trade at all times and must be produced on demand by an authorized official.

8. Transfer of permits

(1) A permit may be permanently transferred, to a dependant, or an assistant acting on behalf of the dependant, who will continue trading until the permit is no longer valid in the event of the death or severe illness of the permit-holder.

(2) A permit may be temporarily transferred to a dependent or, where there is no dependent, to an individual nominated by the permit holder, for reasons such as an illness, pregnancy, family responsibility, religious or cultural matters, or any other personal matter, for a period no longer than six months, provided that an affidavit is provided to the municipality stating the reasons and period for which the permit holder requires the permit transfer.

9. Revocation of permits

The municipality may, upon written notice issued to the informal trader, and after affording him or her an opportunity to make written representations, revoke a permit in the event of such informal trader—

(a) breaching any provisions of the permit or the ByLaw or any other law;

(b) being convicted of trading in illegal goods or providing a service unlawfully; or

(c) wilfully supplying false information during application or when required to provide the municipality with information.

10. Suspension of permits and re-location of traders

(1) Should it be necessary to do so because of the performance of activities which renders the continuation of trading from the relevant trading bay impossible or impractical, the municipality may, upon reasonable notice and with no compensation payable to the permit holder, temporarily—

(a) relocate a permit holder;

(b) suspend the validity of a permit; or

(c) prohibit a permit holder from trading at the relevant trading bay.

(2) Activities referred to in subsection (1) may include, but not be limited to—

(a) maintenance or construction of infrastructure or buildings performed by the municipality;

(b) property developments, alterations or refurbishments by any entity;

(c) activities by public entities conducted in terms of their powers and functions; or

(d) the declaration of a state of disaster in terms of the Disaster Management Act, 2002 (Act 52 of 2002).

11. Infrastructure and basic services

The municipality may, where necessary, and within its financial and administrative capacity, ensure that—

(a) At municipal owned facilities, access to basic services including water, electricity, refuse removal and sanitation are provided at a cost to the informal traders, and that any costs for connection to these services also be charged to the informal trader;

(b) Basic services and maintenance of infrastructure are implemented, if feasible; and

(c) it provides any other necessary infrastructure to promote informal trade.

12. Prohibition of and restriction on trading

Informal trading may not be conducted—

(a) in a public amenity 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 6 of this Bylaw;

(b) on a verge contiguous to—

(i) a building belonging to, or occupied 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 informal trade 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 or other municipal service;

(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; and

(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 owner or occupier of 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;

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

(vii) it obstructs access to an automatic teller machine (ATM);

(viii) it obstructs the view of CCTV cameras; or

(ix) it obstructs access to a pedestrian arcade or mall.

13. General prohibitions

An informal trader may not—

(a) stay overnight at the place of such business,

(b) without approval of the municipality erect any structure (other than a device which operates in the same manner as, and is shaped like an umbrella or gazebo) for the purpose of providing shelter;

(c) create a nuisance to other people;

(d) damage or deface the surface of any public road or public place or other municipal property;

(e) create a traffic hazard;

(f) 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;

(g) 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;

(h) fail or refuse to move or remove any goods, after having been requested to do so by an authorized employee or agent of the municipality; or

(i) display any form of advertising signage or erect any advertising structure of any kind at his or her trading place.

14. Waste removal, cleansing and hygiene

(1) An informal trader must—

(a) maintain his or her trading site in a clean and sanitary condition;

(b) on a daily basis and at the conclusion of trading, collect and remove from any public road or public place all waste, packaging material, stock and equipment that are utilised in connection with or produced by the informal trader's business, unless the municipality grants a written exemption in this regard;

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

(d) at the request of an authorised official, move or remove any object or structure so that the trading site may be cleaned.

(2) A certificate of acceptability, as contemplated in the Regulations Governing General Hygiene Requirements for Food Premises, GN R638 of 22 June 2018, must first be obtained from the Cape Winelands District Municipality where food, irrespective of where such food was prepared, is sold or handled in an informal trading bay.

15. Removal and impoundment

(1) Subject to subsection (3), an authorised official may remove and impound goods of an informal trader which he or she reasonably suspects are being used, have been used or are intended to be used in connection with—

(a) trading in a place or area where informal trading is prohibited or restricted, as per section 12;

(b) trading without a valid trading permit issued by the municipality, as per section 7; or

(c) in the event of an informal trader continuing or repeating a contravention in respect of which one or more notices have been issued to that trader to comply with the bylaw provisions.

(2) If an informal trader is found to be trading in illegal goods or offering illegal goods for sale, the authorised official must confiscate such goods in terms of section 20 of the Criminal Procedure Act, 1977, (Act 51 of 1977) and deliver such goods to the South African Police Services.

(3) The removal and impoundment of goods in terms of subsection (1) may be carried out irrespective of whether such goods are in the possession or under the control of a third party at the time.

(4) Any authorised official who removes and impounds goods in terms of subsection (1) must, except where goods have been left or abandoned in terms of section 18, issue the informal trader a receipt which—

(a) captures the full name, identity number and contact details of the trader;

(b) states the relevant section of the bylaw contravened by the informal trader;

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

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

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

(f) states the place at which the goods will be kept and where representations may be made for release of such goods or for the payment of the cost and;

(g) contains an acknowledgement signed or marked by the informal trader confirming that the contents of the receipt are correct.

(5) An authorised official acting in terms of this section must immediately after impoundment deliver such goods to a facility designated by the municipality for the safe custody of impounded goods.

(6) The owner of goods removed and impounded in terms of subsection (1), is liable for any cost incurred by the municipality in respect of such impoundment and the municipality may keep such goods until all costs are paid or to deal with such goods in terms of section 17 of this bylaw.

16. Impounded goods register

The municipality must upon the presentation of such goods at the place of impoundment keep an impoundment register in the form as set out in Annexure A to this bylaw, which must be available for public inspection at any reasonable time.

17. Disposal of and sale of impounded goods

(1) Any goods removed and impounded may after the impoundment thereof be sold, or in the case of perishable food and vegetables and fruit, be destroyed, subject to subsection (2), in consultation with a Health Officer designated in terms of the National Health Act 2003, (Act 61 of 2003).

(2) Perishable goods may be sold or otherwise disposed of by the municipality, provided that notice has been served on the informal trader concerned, advising him or her—

(a) that his or her impounded goods are to be sold, destroyed or disposed of;

(b) of the time of such sale, destruction or disposal; and

(c) of the reasons for such sale, destruction or disposal.

(3) Goods which have been impounded must, subject to subsection (4), be released to the owner thereof after proof of ownership in the form of the presentation of the receipt contemplated in section 15(4) together with—

(a) proof of payment of the impoundment cost;

(b) proof of payment of a fine imposed; or

(c) where applicable, proof of payment of the impoundment cost and the imposed fine.

(4) Impounded goods may, subject to subsection (6), be sold by the municipality if the informal trader fails to or is unable to pay the impoundment cost within a period specified by the municipality.

(5) After the 30-day period mentioned in subsection (4) has lapsed, the municipality must serve a notice on the informal trader concerned advising him or her—

(a) that the municipality intends selling his or her impounded goods as a result of his or her failure to secure the release of such goods within the specified time; and

(b) of the date, time and place where representations may be made by the informal trader as to why the municipality should not sell his or her goods.

(6) If the owner of impounded good fails to claim such goods or to pay the prescribed fees and costs as contemplated in subsection 3 within 30 days of the date of notification of the proposed sale, the municipality must—

(a) apply to a competent court for authority to sell the goods; and

(b) in the application, provide the court with proof that an account reflecting the fees and costs to be paid was lodged with the own.

(7) Upon the sale of impounded goods, and upon the presentation of the receipt contemplated in subsection (3) as proof of ownership, the municipality must pay to the person presenting the receipt the proceeds of the sale less the impoundment cost.

(8) In the event of the proceeds of any sale of goods contemplated in this section not being sufficient to defray any expenses incurred by the municipality in connection with the removal and impoundment thereof, the trader shall remain liable for the difference.

(9) If such trader fails to claim the said proceeds within 30 days from the date on which such property was sold, the proceeds shall be forfeited to the municipality.

(10) A certificate issued under the hand of the Chief Financial Officer of the municipality, or any person authorised thereto shall be deemed to be proof of any expenses that the municipality has incurred in connection with the removal and impoundment of any goods.

18. Abandoned goods

(1) The municipality shall regard the following as abandoned goods—

(a) goods found on a public road or public place that do not appear to be under the control of any person;

(b) goods found on a public road or public place at the end of a day's business that do not appear to be under the control of any person; or

(c) goods found in a manhole, storm water drain, public toilet, public transport shelter or in any tree or shrub where no evidence is available that it belongs to a specific person.

(2) Abandoned goods found by an authorised official must be removed and immediately delivered to the place of impoundment.

19. Dispute resolution and appeal

(1) An informal trader whose rights are affected or who feels aggrieved by a delegated decision of the municipality may, in writing, request reasons for such decision immediately after being notified of such decision.

(2) The relevant Directorate must within seven days provide such trader with written reasons for the decision and, where necessary, engage with the trader in a meaningful way to resolve the matter.

(3) If the matter cannot be resolved within seven days after the date of notification of reasons, the trader must be notified forthwith of the final outcome of the matter and he or she may appeal against that decision in terms of section 62 of the Municipal Systems Act, 2000 (Act 32 of 2000), by giving written notice of the appeal, and reasons, to the City Manager within 21 days of the date of the notification of the decision.

20. Vicarious liability

When an employee or agent of an informal trader contravenes a provision of this Bylaw, or a condition of an informal trading permit, the informal trader shall be deemed to have committed such contravention himself or herself unless such informal trader satisfies the municipality that he or she took reasonable steps to prevent such contravention.

21. Offences and penalties

(1) It is an offence to—

(a) threaten, resist, interfere with or obstruct an authorized official in the performance of his or her duties or functions in terms of or under this bylaw;

(b) knowingly furnish false or misleading information to an authorized official or the municipality; or

(c) fail or refuse to comply with a notice or instruction issued in terms of this bylaw.

(2) A person who contravenes or fails to comply with a provision of section 21 or who contravenes or fails to comply with any of the provisions of sections 7, 12, 13, or 14, shall be guilty of an offence and liable on conviction to—

(a) a fine or imprisonment, or to both such fine and such imprisonment; and

(b) a further amount equal to any costs and expenses found by the court to have been

(c) incurred by the municipality as result of such contravention or failure.

(3) Enforcement of this bylaw will be through the Municipal Court.

22. Transitional arrangements

Anything done under or in terms of any provision repealed by this bylaw shall be deemed to have been done under the corresponding provisions of this bylaw and the repeal in section 23 shall not affect the validity of anything done under the bylaw so repealed.

23. Repeal of bylaws

The Drakenstein Municipality: Bylaw Relating to Informal Trade, No. 14/2007, published in *Provincial Gazette* No. 6426 date 16 March 2007, is hereby repealed as a whole.

24. Short title and commencement

This Bylaw shall be known as the Drakenstein Municipality: Informal Trading Bylaw, 2023 and shall come into operation on the date of publication thereof in the *Provincial Gazette*.

Schedule 1A (Section 16)

Impounded goods register

An impounded goods register must, at least, contain the following information—

1. Place where goods are kept;
2. Date of receipt of goods;
3. Number and description of goods;
4. Name and address of person who seized the goods;
5. Name and address of owner of goods (where applicable);
6. Name and address or description of place where goods were found;
7. Distance between place where goods were seized and the pound;
8. Date of sale of goods;
9. Proceeds of sale of goods;
10. Name and address of purchaser;
11. Excess amount (if any) paid to owner or municipality; and/or
12. Receipt number.