

Kannaland, South Africa

Supervision and Control of the Carrying on of the Business of Street Vendor, Pedlar or Hawker

Legislation as at 30 May 2003

FRBR URI: /akn/za-wc041/act/by-law/2003/supervision-control-business-of-street-vendor-pedlar-or-hawker/eng@2003-05-30

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PDF created on 28 June 2024 at 12:48.

Collection last checked for updates: 28 June 2024.

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Supervision and Control of the Carrying on of the Business of Street Vendor, Pedlar or Hawker

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Kannaland South Africa

Supervision and Control of the Carrying on of the Business of Street Vendor, Pedlar or Hawker By-law, 2003

Published in Western Cape Provincial Gazette 6025 on 30 May 2003

Commenced on 30 May 2003

[This is the version of this document from 30 May 2003 and includes any amendments published up to 28 June 2024.]

1. Description

Unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Business Act, 1991 (Act of 1991) shall when used in this by-law, have the meaning thus assigned, and—

"council" means the Council of Kannaland Municipality and includes any committee or employee of the council exercising power or performing duties or functions delegated to that committee or employee by the council;

"goods" means any receptacles, vehicles or movable structure used for the storage or transport of goods;

"local authority service" means any system conducted by or on behalf of a local authority for the collection, conveyance, treatment or disposal of refuse sewage or stormwater or for the manufacture, generation, impounding storage, purification, distribution, conduction, transmission, conveyance, provision or supply of water, gas or electricity;

"local authority service works" means all works of whatsoever nature necessary or desirable for or incidental, supplementary or ancillary to any local authority service and includes any immovable property, lake, spring, natural watercourse, machinery, plant or other thing of whatsoever nature used for or in connection with any such works or service;

"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 a person or which materially interferes with the ordinary comfort, convenience, peace or quiet of a person;

"officer" means—

a traffic officer appointed under section 3 of the Road Traffic Act, 1989 (Act 29 of 1989);

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

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

an environmental health officer in the service of the council; or

an official of the council authorised to implement the provisions of this by-law;

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

"public place" means a square, park, recreation ground, sportsground, a sanitary lane or an open space which has:

- (a) in connection with subdivision or layout of land into erven, lots of plots been provided, reserved or set apart for use by the public or the owners or occupiers of such erven, lots or plots, whether or not it is shown on a general plan, plan of subdivision or diagram;
- (b) at any time been dedicated to the public;
- (c) been used without interruption by the public for a period of at
- (d) at any time been declared or rendered a public place by the council or other competent authority;

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

"the act" means the Business Act, 1991 (Act 71 of 1991); and

"verge" means that portions of the road, street or thoroughfare which is not the roadway;

2.

For the purpose of the provisions of this by-law a person carrying on the business of street vendor, pedlar or hawker includes any employee of any such person.

3. Prohibitions of a restriction on the carrying on the business

A person shall not carry on the business of street vendor, pedlar or hawker—

- (a) in a garden or park to which the public has a right of access;
- (b) on a verge contiguous to—
 - a building belonging to, or occupied society by, the State or council;
 - a church or other place of worship, or
 - a building declared to be a national monument under the National Monuments Act, 1969 (Act 28 of 1969);
- (c) in an area declared by the council 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—
 - prohibited; or
 - in contravention of a condition imposed by the council in respect of such an area;
- (d) at a place where—
 - it causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;
 - it substantially obstructs pedestrians in their use of a sidewalk as defined in section 1 of the Road Traffic Act, 1989;
 - it causes an obstruction to vehicular traffic;
- (e) on that half of a public road contiguous to a building used for residential purpose if the owner, occupier or person in control of the building objects thereto;
- (f) on a verge contiguous to building in which business is being carried on by any person who sells goods of the same nature as or of a similar nature to goods being sold by the street vendor, pedlar or hawker concerned, without the consent of that person;
- (g) at a place where—
 - it obstructs access to street furniture, bus passenger, benches or shelters, queueing lines, refuse disposal bins or other facilities for the use of the general public;

it obstructs the visibility of a display window of business premises, if the person carrying on business in the business premises concerned object thereto;

it obstructs access to a pedestrian crossing;

it obscures any road traffic sign or any marking, notice or sign displayed in terms of this by-law;

it interferes in any way with any vehicle that may be parked alongside such place; or

it limits access to parking or loading bays or other facilities for vehicular traffic.

4. General

A person carrying on the business of street vendor, pedlar or hawker shall not—

- (a) in any way obstruct free access to any local authority service or local authority service works;
- (b) if such business is carried on in any public road or public place—
 - stay overnight at the place of such business; or
 - without the prior written approval of the council, erect any structure (other than a device which operates in the same manner as an umbrella) for the purpose of providing shelter;
- (c) carry on such business in a manner as to—
 - create a nuisance;
 - damage or deface the surface of a public road or public place or any other council property; or
 - create a traffic hazard;
- (d) attach 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, receptacle, vehicle or movable structure after having been requested to do so by the supplier of a telecommunication service who requires access to such service, or by an authorised employee or agent of the council or an officer acting in terms of section or 5 of this by-law.

5. Cleanliness of place of business and protection of public health

A person carrying on the business of street vendor, pedlar or hawker shall—

- (a) not 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, stormwater drain or any public road or public place, other than in a refuse receptacle approved by the council;
- (b) carry on business in such a manner as not to be a danger or threat to public health or public safety;
- (c) at the request of an officer on a duty authorised employee of the council, move or remove anything from the place of business concerned so that the place may be cleaned;
- (d) carry on business in such a manner that the place of business is always in a clean and neat condition;
- (e) unless prior written approval, exempting him from the provisions of this paragraph has been given by the provisions of this paragraph has been given by the council remove daily from any public road or public space at the conclusion of trading all waste, packing material, stock and equipment of whatsoever nature which are utilised in connection with such business.

6. Removal and impoundment

An officer may remove and impound any goods—

(a) which—

are found at a place where the carrying on of such business is prohibited or restricted in terms of section 2 and which, in the officer's opinion, constitute an infringement of such section, or

in the officer's opinion, are so placed that they—

cause an obstruction to vehicular traffic, or

obstruct a local authority service or local authority service works;

(b) which the person carrying on the business of street vendor, pedlar or hawker has failed or refused to remove from the place concerned after having been requested to do so an officer or a duty authorised employee of the council, or

(c) which have been abandoned.

Any officer acting in terms of subsection (1) shall—

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

forthwith deliver any such goods to the council.

7. Demarcated stands or areas

If the council has set apart and demarcated any stand or area for the purpose 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 in such area unless he or she has leased such stand or area from the council or that it has otherwise been allocated to him or her.

8. Carrying and display of written approval

A person carrying on the business of street vendor, pedlar or hawker shall whenever such person is carrying on such business, carry on his or her person any written approval granted or issued to that person by the council in terms of this by-law and shall on demand show such written approval to an officer or a duty authorised employee of the council.

9. Charges

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

10. Appeals

A person who feels aggrieved by a decision of the Council may appeal against the decision to an Appeal Committee in accordance with the provisions set out herein.

A person who feels aggrieved by a decision of the Council shall, within 10 days of having received notification of the council's decision, notify the council and the chairperson of the Appeal Committee of an intention to appeal against the decision in writing.

11. Constitution of Appeal Committee

The Provincial Minister responsible for Business Promotion and Tourism may, with the concurrence of the council, designate as members of the Appeal Committee representatives of the street vendors, pedlars and hawkers and any other interested persons.

The Appeal Committee shall consist of a maximum of six members but at least two members shall be representatives referred to in subsection 1.

The members of the Appeal Committee shall appoint one member to act as chairperson.

If the chairperson is of the opinion that a particular person is able to assist the Appeal Committee, that person may be co-opted to the Appeal Committee.

A person so co-opted shall not be entitled to vote at a meeting of the Appeal Committee.

The chairperson shall, within 10 days of the receipt of the notice of appeal, notify the aggrieved person of the date, time and place of the meeting of the Appeal Committee at which that person's presence is required.

The aggrieved person who has received notice in terms of subsection (6) shall personally appear at the meeting and may appoint a legal representative or any other person to appear on the aggrieved person's behalf.

12. Procedure at Appeal Meetings

The chairperson shall determine the procedure at the meeting.

All members shall be present at the meeting of the Appeal Committee.

Any person present at the meeting may—

be called upon by the chairperson to give evidence;

be called upon by the chairperson to produce to the Appeal Committee a document or other property which is in that person's possession or under that person's control, or

be questioned by the Appeal Committee on the matter before it.

A decision of the Appeal Committee shall be taken by a majority of votes of the member present at the meeting and if there is an equality of votes, the chairperson shall have a casting vote in addition to a deliberative vote.

The Appeal Committee, having considered the evidence presented, may—

refuse the appeal;

uphold the appeal; or take any other steps that it may think fit.

The Appeal Committee shall as soon as possible—

notify the aggrieved person of its decision in writing and

furnish the aggrieved person with written reasons for the decision.

13. Offences

A person who—

contravenes or fails to comply with a provision of this by-law;

ignores, disregards or disobeys a notice, sign or marking displayed or erected for the purposes of this by-law;

contravenes or fails to comply with an approval or condition granted or imposed in terms of this by-law;

fails to comply with a request to move or remove his or her property;

deliberately furnishes false or misleading information to an officer or duly authorised employee of the council; or

threatens, resists, interferes with or obstructs an officer or duly authorised employee of the council in the exercise or performance of that officer's or employee's powers or duties under this by-law,

Shall be guilty of an offence and liable on conviction to a fine not exceeding (R1 000) or to imprisonment for a period not exceeding (three months).

14. Application

The by-law explained in this Schedule is applicable in the whole of the Kannaland Municipality's area of jurisdiction.