

## STREET TRADING BY-LAWS

The member of the Executive Council for Economic Affairs and Finance, hereby publishes for public information, By-law regarding Street Trading, which he has approved in terms of section 6A of the Business Act, 1991 (Act No.71 of 1991).

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**MEC:** Economic Affairs and Finance

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1. DEFINITIONS

In these by-laws any word of expression to which a meaning has been assigned in the Businesses Act, 1991 (Act No.71 of 1991), shall have such meaning, and unless the context indicates otherwise --

- (i) "Act" means the Businesses Act, 1991 (Act No.71 of 1991);
- (ii) "authorised officer" means --
  - (a) a traffic officer appointed under section 3 of the Road Traffic Act, 1989 (Act No.29 of 1989), or
  - (b) a peace officer as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No.51 of 1977);
- (iii) "Council" the city Council of Pretoria (established under Premier's Proclamation 38 dated 8 December 1994);
- (iv) "foodstuffs" means foodstuff as defined in section 1 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No.54 of 1972);
- (v) "garden" means any garden to which the public has right of access;
- (vi) "goods" means any movables displayed in a street by any person for the purpose of carrying out a sale, and this includes any article, receptacle, vehicle or movable structure;
- (vii) "lease" means a lease agreement as contemplated in section 3(2);
- (viii) "litter" includes any container or other matter that has been discarded or left behind by a person trading or his/her customers;
- (ix) "municipality" means the area that falls under the jurisdiction of the Council;
- (x) "national monument" means a building declared to be a national monument under the National Monuments Act, 1969 (Act No.28 of 1969);
- (xi) "park" includes any square or other open or enclosed space to which the general public has right of access;
- (xii) "prohibited area" means any place declared or to be declared under section 6A(2) of the Act by resolution of the council to be an area in which street trading may be prohibited;
- (xiii) "public place" means a public place as defined in section 1 of the Local Government Ordinance, 1939 (Ordinance No.17 of 1939);
- (xiv) "property" in relation to a person carrying on the business of a street vendor, means an article, receptacle, vehicle or structure used or intended to be used in connection with such business, and includes the goods in which he trades;
- (xv) "public building" means a building occupied solely by the state or council;

- (xvi) "public road" means any road, street, thoroughfare, bridge, overhead bridge, subway, foot pavement, footpath, sidewalk and lane vested in the Council as contemplated in section 63 of the Local Government Ordinance, 1939 (Ordinance No.17 of 1939);
- (xvii) "restricted area" means any place declared under section 6A(2) of the Act by resolution of the council to be an area in which street trading may be restricted;
- (xviii) "sell" in relation to any park or public road, means any act of selling or supplying goods coupled with the intention, at the time of such selling or supplying, to continue such activity " business" has a corresponding meaning;
- (xix) "selling" means to display goods for sale by inviting others to come and buy the goods so displayed, including supply to carry on a business, has a corresponding meaning; and also --
  - (a) exchange or hire;
  - (b) store, expose, offer or prepared for sale; and "sale" has a corresponding meaning;
- (xx) "service" means the performance on a public road or in a park of any act for gain or reward;
- (xxi) "sidewalk" means that portion of a verge intended for the exclusive use of pedestrians;
- (xxii) "stand" means a stand on a sidewalk or verge set apart and demarcated by the Council as contemplated in section 6A(3)(b) of the Act;
- (xxiii) "street vendor" means a person selling goods or rendering a services and includes a person to whom a stand has been leased or allocated in terms of section 3 for as long as the person is carrying on the business of a street vendor in it;
- (xxiv) "verge" means a verge as defined in section 1 of the Road Traffic Act, 1989 (Act No.29 of 1989).

## 2. PROHIBITION ON CARRYING ON BUSINESS

No person shall in the municipality carry on the business of a street vendor --

- (a) in a garden or park;
- (b) on a verge contiguous to --
  - (i) a building belonging to or occupied solely by the State or the Council;
  - (ii) a church or other place of worship; or
  - (iii) a building declared a national monument in terms of the National Monuments Act, 1969 (Act No.28 of 1969);
- (c) in an area declared by the Council as a prohibited/restricted area in terms of section 6A(2) of the Act, save on a stand leased by virtue of a lease agreement as contemplated in subsection 3;
- (d) at a place where --
  - (i) it causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;
  - (ii) it causes an obstruction to vehicular traffic; or
  - (iii) it substantially obstructs pedestrians in their use of a sidewalk; and
- (e) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects to it.

## 3. APPLICATION TO LEASE A STAND

- (1) Any person who intends to carry on a business as contemplated in section 2(c) shall, on the prescribed form (Annexure A) apply to the Council for the lease or allocation of a stand.

- (2) If such applicant is successful --
  - (a) the applicant shall, in respect of such stand, enter into a lease agreement with the Council at such rental as prescribed in Annexure B.
  - (b) a token shall be issued to the applicant (hereinafter referred to as the "street vendor") as proof of the person's right to occupy such stand for the purpose of carrying on business as contemplated in section 2(c);
  - (c) street vendors shall, while selling on the stand, retain such token on their persons ready for production to any authorized officer who calls for them; and
  - (d) the council may, at the written request of the street vendor, issue a token to one bona fide employee of the street vendor, and the provisions of subsection (c) shall be applicable to such employee mutatis mutandis.
- (3) A person who carries on the business of a street vendor on a stand and who is unable to produce a token, as contemplated in subsection 2(b) shall be guilty of an offence.

#### 4. OFFENCES

- (1) A street vendor who --
  - (a) places or stacks goods on a stand in such a manner that they constitute a danger to any other person or are likely to injure any person or damage any other goods or property;
  - (b) attaches any goods by any means to any building, structure, pavement, tree, parking meter, lamp pole, electricity pole, telephone booth, post box, traffic sign or bench;
  - (c) makes a fire on or near any stand or at a place or in circumstances where it could harm any person or damage a building or vehicle;
  - (d) stores goods in a manhole or stormwater drain or any other place not intended for the storage thereof;
  - (e) disposes of any litter in a manhole, stormwater drain or any other place not intended for the disposal thereof; or
  - (f) uses any vehicle, trailer, container, shelter, tent not approved for use by the Council on a selling point in a prohibited/restricted area;
  - (g) contravenes any provision of these-by-laws or fails to comply herewith or with any other conditions imposed in terms of these by-laws;
- (2) Street vendor who fails to --
  - (a) keep their stand, including any goods used by them in carrying on a business, in a hygienic and neat condition; or
  - (b) take all reasonably necessary precautions to prevent spilling any litter, including fat, oil and grease, on to a public road or prevent any smoke, fumes, odours or noise emanating from their stand becoming a nuisance;
  - (c) arrange or move their goods at the request of an authorized officer or a person whose lawful duties include the rendering of or in related to the supply of essential public services, so as to permit or facilitate the carrying out of such service.

#### 5. VICARIOUS RESPONSIBILITY OF PERSONS CARRYING ON BUSINESS

When an employee or a person conducting the business of street trading does or omits to do any act which would be an offence in terms of these by-laws for that person to do or omit to do that person shall be deemed themselves to have done or omitted to do the act, unless he satisfies the court that --

- (a) they neither connived at nor permitted the act or omission by the employee concerned;
- (b) they took all reasonable steps to prevent the act or omission; and
- (c) an act or omission, whether lawful or unlawful, of the nature charged on no condition or under no circumstances fall within the scope of the authority or employment of the employee concerned and the fact that the said person issued instructions whereby an act or omission of that nature is prohibited shall not in itself be sufficient proof that they took all reasonable steps to prevent the act or omission.

##### 5.1 VACARIOUS RESPONSIBILITY OF EMPLOYEES

When a person carrying on the business of street trading is by virtue of section 20 liable for an act or omission by an employee of that person, that employee shall also be liable as if they were the person carrying on the business concerned.

6. IMPOUNDMENT/REMOVAL/DISPOSAL

- (1) An authorized officer may remove and impound any goods, street furniture, container, shelter or tent --
  - (a) which, on reasonable grounds, they suspect are being used or are intended to be used or have already been used in connection with the carrying on of the business of a street vendor;
  - (b) which they find in a park or on a public road/place and which, in their opinion, constitutes an infringement of these By-laws, whether or not such goods, street furniture, container, shelter or tent are in the possession of or under the control of any person at the time of such impoundment an removal;
- (2)(a) An authorized officer acting by virtue of subsection (1), shall issue a receipt to the person who appears to be in control of the goods, street furniture, container, shelter or tent concerned.
  - (b) Any goods, street furniture, container, shelter or tent as contemplated in subsection (a) shall be marked in a suitable manner and kept in safe custody pending the institution of criminal proceedings.
- (3)(a) After the finalization of Criminal proceedings, any confiscated goods, street furniture, container, shelter or tent may be claimed by the owner thereof on production of proof of ownership to the satisfaction of the Council;
  - (b) Any goods, street furniture, container, shelter or tent which have not been claimed within a period of three months from the finalization of criminal proceedings, will be destroyed if of no commercial value, or sold by public auction and the proceeds of such auction retained by the Council to defray its costs.
  - (c) The Council shall not be liable for compensation to any person for damages arising out of the damage to or the loss of any goods, street furniture, container, shelter or tent removed in terms of subsection (1) or the sale thereof by public auction, and the owner of such goods shall have no claim or right of redress against the Council should such object be handed over in good faith to a person other than the owner thereof.
  - (d) Any goods of a perishable nature will only be kept for 24 hours from confiscation and will then be destroyed.

7. PENALTIES

A person who contravenes or fails to comply with any provision of these By-laws, shall be guilty of an offence and shall be liable on conviction to a fine or imprisonment for a period not exceeding three months.