



DRAFT FOR PUBLIC PARTICIPATION

KUNGWINI LOCAL MUNICIPALITY

STREET TRADING BY- LAWS

The Municipal Manager hereby publishes in terms of Section 13 of the Local Government: Municipal systems Act, 2000(Act No. 32 of 2000), read with Section 162 of the Constitution of the Republic of South Africa, Act 1996 (Act No.108 of 1996), the Street Trading By-Law.

Purpose of By-Law

The purpose of this by-law is to regulate street trading for the benefit of the public residing and carrying on business within the municipal boundaries of the Council.

1. **DEFINITIONS**-in this by-law, words used in the masculine gender includes the feminine, the singular includes the plural and vice versa and unless the context otherwise indicates:

1.1 **“Act”**- means the Businesses Act 71 of 1991 as amended.

1.2 **“approval”**- means approval by the Council and “approve” has a corresponding meaning:

1.3 **“Authorised officer”**- means an official of council authorized to implement the provisions of this by-law.

1.3.1. A **traffic officer** appointed under section 3 of the Road Traffic Act, 1989 (Act no 29 of 1989)

1.3.2. A **peace officer** as contemplated in section 334 of the Criminal Procedure Act 51 of 1977;

1.3.3. **An Environment Health Practitioner** means an official appointed by the Council, and who is duly registered as an environmental health practitioner with the Health Professions Council of South Africa in terms of section 33(1) of the medical, dental and supplementary health Services Professions ACT, 1974 (Act No. 56 of 1974)

1.3.4. A **Fire Officer** as contemplated in the Fire Brigade Services Act, 99 of 1987.

1.4 **“Child”**- means a male or female person under the age of 16 years, in terms of the Labour Relations Act.

1.5 **“Council”**- means Kungwini Municipality whose members are elected in terms of section 22 of the Local Government Municipal Structures Act 1998 (Act 117 of 1998).

1.6 **“Council services”**- means any system conducted by or on behalf of a local authority for the collection, conveyance, treatment or disposal of refuse, sewage or storm water or for the generation, impounding, storage or purification or supply of water, gas or electricity; or municipal services:

1.7 “Foodstuff”- means foodstuffs as defined in the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972:

1.8 “Garden”- means any garden to which the public has a right of access:

1.9 “Goods”- means any movable displayed or kept by a person in a public place or public road for the purpose of carrying on the business of a street trader including any article, container, vehicle or movable structure;

1.10 “Intersection”- means any intersection as defined in the regulations promulgated in terms of the National Road Traffic 93 of 1996:

1.11 “Lease”- means a lease agreement as contemplated in section 8 of these by-laws:

1.12 “Litter”- includes any container or other waste matter that has been discarded or left behind by the person trading or his/her customer in or near the place where such person trades:

1.13 “Park”- includes any square or other open or enclosed space to which the general public has a right to access:

1.14 “Prescribed”- means prescribed by Council resolution:

1.15 “Prohibited area”- means a place declared in terms of section 6A (2) of the Act to be an area of in which street trading is prohibited:

1.16 “Property”- means, in relation to a person carrying on the business of a street trader, any article, receptacle, vehicle or structure used or intended to be used in connection with such business and includes the goods of such a business:

1.17 “Public amenity”- means:

1.17.1. Any land, square, swimming bath, public resort, recreation site, zoological, botanical or other garden, park or hiking trail, including any portion thereof and any facility or apparatus therein or thereon, as well as any public road, road reserve street, lake, dam, or river;

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

1.17.3. Also any public amenity contemplated in Paragraph 1.17.1 and 1 if it is lawfully controlled and managed in terms of an agreement by a person other than the Municipality.

1.17.4. Any nature conservation area including-

- Nature reserves
- Protected natural areas
- Nature conservation worthy areas
- Natural open spaces

1.18 **“Public place”**- means a public place as defined in section 2 of the Local Government Ordinance 17 of 1939:

1.19 **“Public road or roadway”**- means a public road and roadway as define in section 1 of the National Road traffic Act 93 of 1996:

1.20 **“Restricted area”**- means any area, including an area created for the purpose of street trading markets, where street trading will be subjected to such specific conditions and restrictions as the Council deems fit.

1.21 **“Sell”** includes

- 1.21.1. offer to render a service
- 1.21.2. barter, exchange or hiring out;
- 1.21.3. display, expose, offer or prepare for sale;
- 1.21.4. store with a view to sell; or
- 1.21.5. provide a service for reward

And **“sale”** and **“selling”** has a corresponding meaning:

1.22 **“Services”**- includes any advantage or gain for consideration or reward.

1.23 **“Sidewalk”**- means a sidewalk as defined in section 1 of the National Road Traffic Act 93 of 1996:

1.24 **“Street furniture”**- means any furniture installed by the municipality on the street for public use;

1.25 **“Street trader”**- means a person selling goods or rendering a service and includes a seller, peddler or hawker and also:

A person who as principal, agent, assistant or employee carries on the business of street trading; and a person to whom a stand has been leased or allocated in terms of section 8 of these by-laws for as long as the person is carrying on the business of a street trader on it:

1.26 **“Trade”**- means to sell goods or services in a public road or public place and **“trading”** or **“street trading”** has a corresponding meaning.

1.27 **”Verge”**- means a verge as defined in section 1 of the National Road Traffic Act 93 of 1996.

1.28. “Certificate of Acceptability” means a certificate of acceptability referred to in Government Notice No. R918 of 30 July 1999 as corrected by Government Notice R723 of 12 July 2002, regulation 3.

2. INTERPRETATION OF BY-LAWS

In these by-laws any word or expression for which a meaning has been assigned in the Businesses Act 71 of 1991, shall have such meaning, unless the context indicates otherwise and the street trading policy approved by Council, resolution no: CR/29/12/07.

3. SINGLE ACT CONSTITUTES STREET TRADING

For the purpose of these by-laws a single act of selling or offering for sale or rendering of services in a public road or public place constitutes street trading.

4. AREAS WHERE HAWKER TRADING IS PROHIBITED.

No person shall, within the municipal area of the Municipality, carry on the business of a street trader:

4.1 In a public amenity ;

4.2 In a garden or park to which the public has a right of access; except where special permission has been granted by an authorized officer.

4.3 On a verge contiguous to:

4.3.1 A public amenity;

4.3.2 A building belonging to or occupied solely by the State or the Council except at institutions of learning subject to any health regulation that may be imposed;

4.3.3 A church or other place of worship; or

4.3.4 A building declared to be a heritage resource in terms of the National heritage Resources Act 25 of 1999; expect where special permission has been granted in terms of the same legislation.

4.3.5 An auto teller bank machine;

Except to the extent that the carrying on of such business is permitted by a sign erected or displayed by the Municipality and in compliance therewith;

4.3.6 In an area declared by the Municipality as a prohibited or restricted area in terms of section 6A(2) of the Act, except on a stand leased by virtue of a lease agreement as contemplated in section 8.3 of these by-laws; with reference to:

4.3.6.1 certain specific periods during the 2010 period/term

4.3.6.2 the boundaries of Restricted Areas or prohibited Areas

4.3.6.3 the boundaries of a stand or area set apart for the purpose of carrying on the business of street trading

4.3.6.4 any other category of restricted or prohibition against street Trading, which the Municipality may prescribe

4.4 at a place where;

4.4.1 it causes an obstruction in front of a fire hydrant;

4.4.2 it causes obstruction in front of the entrance or exit from a building; the distance should be only 3 meters.

4.4.3 It could cause an obstruction to vehicular traffic;

4.4.4 It could substantially obstruct pedestrians in their use of a sidewalk.

4.5 On a public road contiguous to a building used for residential purpose if owner or person in control or any occupier of the building objects to it.

4.6 On a public road contiguous to a shop or that part of a building in which business is being carried on by a person who sells goods of the same nature as, or of a similar nature to, goods being sold by the street trader if that person objects to it.

4.7 On a stand or in any area demarcated by Municipality in terms of section 6A(3) (b) of the Act if he/she is not in possession of written proof that he/she has rented such stand or area from the Municipality or that such stand has been allocated to him; nor shall he/she trade in contravention of the terms and conditions of such lease or allocation.

4.8 Within five (5) metres of any intersection as defined in Regulation 322 of the National Road traffic Act 93 of 1996.

5. PRODUCTS AND SERVICES PROHIBITED

5.1 Selling and/or offering of the following products and/or services will not be allowed;

5.1.1 sale or any trade of flammable liquids

5.1.2 trade involving any illegal activities i.e drugs

5.1.3 repair of motor vehicles

5.1.4 sale of liquor or any intoxicating substances

5.1.5 harmful chemicals, poisons and defoliant

5.1.6 sale of raw meat, fish, live stock, and all perishable foodstuffs excluding ice cream and frozen yoghurt.

5.1.7 Fireworks

5.1.8 Braiding and cutting of hair

5.1.9 Car washing on streets parking bays, only allowed on demarcated areas

6. CLEANLINESS

A street trader must:

6.1 Keep his/her stand, property and goods, for the purpose of street trading in a clean and sanitary condition

6.2 not dispose of any litter and refuse by placing it in a manhole, storm water drain or any other place not intended for the disposal of litter.

6.3 Ensure that on completion of business for the day the area or stand occupied by him/her is clean and free of litter and refuse and must do so within the parameters of certain prescribed specific periods of time.

6.4 Take the necessary precautions to prevent the spilling onto a public road or public place of any fat, oil or grease in the course of conducting his/her business and must further prevent smoke, fumes and **odours** emanating from his/her activities.

6.5 On request by an authorised official must remove his/her goods and property to permit the cleaning of the stand if necessary.

6.6 A street Trader shall:

6.6.1 Ensure that no smoke, fumes or other substances causes Air Pollution

6.6.2 Ensure that no odour, or noise emanating from his or her activities causes a Nuisance of any kind

7. GENERAL CONDUCT

A street trader must:

- 7.1 not place his/her property or goods on a verge or public place except for the purpose of commencing trade;
- 7.2 ensure that his/her property or goods do not cover an area of a public road or public place in excess of 3m² without the written consent of the Municipality.
- 7.3 not place or stack his/her property and goods in such a manner that it constitutes a nuisance or danger to any person, or property, or is likely to injure any person or cause damage to property;
- 7.4 on concluding his/her business activities for the day, remove all his/her property and goods except any structures allowed by the Municipality to a place which is not part of a public place or public road;
- 7.5 on request by an employee or authorised official of the Municipality or supplier of electricity, telecommunication, or other services, remove his/her property and goods so as to permit the carrying out of any work or service in relation to a public road or public place;
- 7.6 not attach any object by any means to any building, structure, sidewalk, tree, parking meter, lamp-pole, electricity pole, telephone pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or a public place;
- 7.7 not make fire in any place or in circumstances where it could cause injury or loss to a person, building, vehicle, or street furniture;
- 7.8 not store his/her property and goods in a manhole, storm water drain or a public toilet, bus or taxi shelter or tree;

- 7.9 not sleep overnight at the place of such business;
- 7.10 not erect any structure for the purpose of providing shelter, other than a structure approved by Municipality
- 7.11 not display his/her property on or in a building, without the consent of the owner, lawful occupier or person in control of such building or property;
- 7.12 not obstruct access to pedestrian crossings, parking or loading bays or other facilities for vehicular or pedestrians;
- 7.13 not carry on business in such a manner as to
- 7.13.1.create a nuisance;
 - 7.13.2.damage or deface the surface of a public road or public place or any public place or any public or private property;
 - 7.13.3.create a traffic and/or health hazard or health risk, or both;
- 7.14 not 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;
- 7.15 not carry on business, or take up a position, or place his or her property on a portion of a sidewalk or public place , in contravention of a sign or notice erected or displayed by the Council for the purpose of these by-laws;
- 7.16 not place or store his or her property in a public place, with the exception of his or her motor vehicle or trailer from which trade is conducted, and provided that such vehicle or trailer does not obstruct pedestrian and vehicular traffic movement, and complies with the provision of the National Road Traffic Act, 1996;
- 7.17 not carry on such business in a place or area in contravention of any prohibition or restriction approved by council in terms of section 6A(2)(a) of the business Act and Street vending policy.
- 7.18 Not use any inflammable liquids without the necessary approval by the Municipality.
- 7.19 Only make open fires in approved place purpose made stove, fireplace or health that for forms an integral part of a structure.
- 7.20 Food will only be handled if a valid certificate of acceptability has been issued by the Local Authority i.e Community Health Services SBU.

8. RESTRICTED AND PROHIBITED TRADING AREAS

8.1 the Municipality may, in terms of section 6(A)(2) of the Act, declare any area within its jurisdiction as an area where the carrying on of business as a street trader is restricted or prohibited with reference to:

8.1.1 A specific category or categories of goods or services; and/or

8.1.2 Specific times or days or both.

8.2 The Municipality may identify and demarcate any such restricted and/or prohibited trading area in any manner it deems appropriate and fit.

9. APPLICATION AND ALLOCATION OF LEASE AND PERMIT/TOKEN FOR STANDS

9.1 Any person who intends to carry on a business as a street trader in terms of the provisions of the Act may apply to the Municipality in the prescribed manner for the allocation of a stand in terms of section 6(A)(3)(c) of the Act.

9.2 The Council may grant, subject to conditions or refuse an application.

9.3 If such application is successful:

9.3.1 The street trader must, in respect of the lease of such stand, enter into a lease agreement with the Municipality which lease agreement must be produced on the request of an authorised officer.

9.3.2 In respect of the allocation, as well as the lease of a stand a permit/token shall be issued to the street trader as proof of the person's right to occupy a stand for the purpose of carrying on business as contemplated in section 8.2 of these by-laws.

9.3.3 Street traders must, while carrying on business on the stand, retain such permit/token on their person ready for display to any authorised officer who requests it; and

- 9.3.4 The Municipality, may, on the written request of a street trader, issue a token to one bona fide employee of the street trader and the provisions of subsection 9.2 shall mutatis mutandis apply to such employee.
- 9.4 A person carries on the business of a street trader on a stand and who is unable to produce a valid lease agreement or permit/token, as contemplated in section 9.2, shall be guilty of an offence.
- 9.5 A person who carries on the business of a street trader on a stand and who fails to comply with the conditions of the lease agreement shall be guilty of an offence.
- 9.6 A valid permit/token shall carry on it a photo, identity number and a unique identifying mark of the Municipality.
- 9.7 Only the owner of the permit/token in whose name the lease agreement has been entered into may renew a permit/token, including the permit/token issued on written request to a bona fide employee.
- 9.8 Permits/tokens will be renewed monthly by making the required monthly payment. No advance payments will be accepted.
- 9.9 No monthly renewal payment on a permit/token will be accepted where fines that have been issued against the permit/token. Subsequently a permit/token will only be renewed where all outstanding fines issued against that permit/token has been paid in full.
- 9.10 Permits/tokens are non-transferable and may not be sold traded or transferred in any way.

10. IMPOUNDMENT AND REMOVAL

- 10.1 subject to any applicable legislation, an authorised official of the Municipality may impound and remove any goods or property
- 10.1.1 which he/she reasonably suspects of being used or are intended to be used or have been used in or in connection with the business of street trading, and
- 10.1.2 which he/she finds at a place where the carrying on of such business constitutes an offence in terms of these by-laws, irrespective of whether such goods or property are in the possession or control of any person at the time of such impoundment and/or removal.

10.2 an authorized officer acting by virtue of section 9.1 must comply with the SAPS Act, Act 68 of 1995 and Criminal Procedures Act, Act 51 of 1977.

10.3 Any goods of a perishable nature, including plants and flowers, will be kept for 24 hours after confiscation and if of no value they shall be disposed of, otherwise sold to the best advantage by the authorised officer or person designated by him/her, the proceeds to accrue to the Municipality to defray costs.

10.4 Goods will be disposed of in accordance with the Criminal procedure Act, Act 51 of 1977.

11. VICARIOUS LIABILITY OF PERSONS TRADING

11.1 when an employee/sub contractor/assistant/agent of a street trader performs any act or an omission which constitutes an offence in terms of these by-laws, the employer shall be deemed to have committed the act or omission himself/herself unless he/she satisfies the court that:

11.1.1 in committing that act or omission the employee/subcontractor/assistant/agent was acting without his/her permission or knowledge.

11.1.2 He/she took all reasonable steps to prevent the act or the omission, and

11.1.3 It was not within the scope of authority and the course of employment of the employee to perform such act or omission, of the nature in question, and the mere fact that such employer issued instructions forbidding that act or omission shall not itself be accepted as sufficient proof that he/she took the action referred in subparagraph 11.1.2.

11.2 When an employer is by virtue of section 10.1, liable for an act or omission by his employee, then that employer shall also be liable for persecution of the offence.

12. CHILDREN NOT PERMITTED TO TRADE

12.1 No person under the age of 16 shall be found trading in or near a public road or place/or Public Amenity.

12.2 Any person who employs or engages or request such a person referred to in section 12.1 above, to conduct the business of a Street Trading or to

assist therewith shall be guilty of an offence and upon conviction, be liable to a fine or imprisonment for a period not exceeding three months.

13. OFFENCES AND PENALTIES

- 13.1 Any person who contravenes a provision of these by-laws or fails to comply with any condition or restriction imposed under these by-laws, or by an authorised official, shall be guilty of an offence.
- 13.2 Any person who is guilty of an offence in terms of these by-laws shall upon conviction, be liable to a fine or to imprisonment not exceeding 3 months.