

OVERSTRAND MUNICIPALITY

DRAFT INFORMAL TRADING BY-LAW

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996, the Overstrand Municipality enacts as follows: -

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1. Definitions

“Property” means any commodities, articles, goods, vehicles and structures used or intended to be used in informal trading;

“informal trader” means any person that carries on a business as a street vendor, hawker and include an employee of such person and for the purpose of this by-law, includes any person who trades in a public place.

“informal trading” means the selling of goods and services within a space deemed to be public property or road within the informal sector.

“litter” means any refuse or other object or matter discarded or abandoned by an informal trader or his customers

"Municipality" means the Overstrand Municipality established in terms of section 12 of the Municipal Structures Act, 1998 (Act 117 of 1998), and includes any political structure, political office bearer, or duly authorized 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, agent or employee;

“Municipal Manager” means the person appointed by the Municipality in terms of Section 82 of the Municipal Structures Act, 1998 and includes any person:

- (a) acting in such position; and
- (b) to whom the Municipal Manager has delegated any power, function or responsibility in as far as it concerns the execution of those powers, functions or duties.

“nuisance” means any conduct which brings about a state of affairs or condition which constitute a source of danger to a person or property of others or which materially interferes with the ordinary comfort, business convenience, peace or quiet.

“officer” means –

- a) a traffic officer appointed under section 3(1) of the Road Traffic Act, 1989 (Act 29 of 1989);
- b) an officer of the South African Police Service as defined in section 1(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, 1977 (Act 51 of 1977);
- d) an environmental health officer.

“public road” means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

“public space” means any square, park, recreation ground, sports ground, sanitary lane or open space which has –

- a) in connection with any subdivision or layout of land into erven, lots or 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 they have been** shown on a general plan, plan of subdivision or diagram;
- b) at any time dedicated to the public;
- c) at any time been declared or rendered a public space by the Municipality or another competent authority;

“sidewalk” means a sidewalk as defined in section 1 of the National Road Traffic Act, 1996 (Act 93 of 1996);

“Act” means the Businesses Act, 1991 (Act 71 of 1991), and includes the regulations promulgated under the Act.

2. Purpose of the by-law

2.1 The Municipality recognizes the objectives of the Constitution to promote social economic development, a safe and healthy environment, to promulgate municipal planning, trading regulations and to provide a well managed informal trading sector that is fully integrated into the local economy and conforms to the social development objectives set by the Municipality.

2.2 The Municipality therefore recognizes the need to incorporate a developmental approach to informal street trading to enable access to entrepreneurial opportunities within the informal trading sector that may lead to the migration of informal trading into the formal trading sector.

2.3 The Municipality has a responsibility for the stewardship and management of public places by regulating informal trading within the jurisdictional area of Overstrand in a way that enhances the Municipality’s constitutional and statutory obligations within the meaning of section 156(1)(a) and (2) of the Constitution of the Republic of South-Africa, 1996 and section 83(1) of the Municipal Structures Act, 1998.

2.4 This by-law shall give effect to the Municipality’s Informal Trading Policy.

3. Principles and objectives

3.1 The Municipality acts in terms of the principles set out in the Constitution by taking into consideration the needs of residents to actively participate in economic activities, whilst taking into consideration the need to maintain a clean, healthy and safe environment

3.2 In the implementation of this by-law the Municipality must take into consideration the realities of the Overstrand areas, in respect of both its cultural and custom differences as well as its geographical areas.

4. General Conduct

A person carrying on the business of informal street trader –

- a) shall not place his or her property on a public road or public space except for the purpose of conducting informal trade;
- b) shall ensure that his or her property does not cover an area of a public road or public space which is greater than the specified area as provided for in the Municipality's Informal Trading Policy;
- c) shall not obstruct access to a fire hydrant or any other designated facility or area demarcated solely for the use of emergency vehicles and services;
- d) shall not trade in a place of worship;
- e) shall not trade in or in front of a building declared a National Monument in terms of the National Heritage Resources Act, 1999 (Act 25 of 1999);
- f) shall not carry on the business of an informal trader on the section of a public road adjacent to a building used for residential purposes, if the person or owner in control objects to it;
- g) shall not carry on the business of informal street trader at a place that causes an obstruction to vehicular traffic;
- h) shall not carry on the business of informal street trader at a place where it substantively obstructs pedestrians in the use of the sidewalk;
- i) shall only carry on the business of an informal street trader when in possession of an informal trading permit that confirms that he or she may carry on the business of an informal street trader in an demarcated area allocated by the municipality.
- j) shall, when requested by an official of the Municipality or by a person authorized to provide municipal services, move his or her property so as to permit the official or other person to carry out any work in relation to a public road, public amenity or service;
- k) shall carry on informal street trading in such a manner that it does not cause a nuisance;
- l) shall ensure that all refuse and litter produced in the course of informal street trading is placed in refuse bins provided by the Municipality;

- m) shall, in the case of a mobile informal street trader, trade only within the boundary of the management zone assigned to him or her;
- n) shall, in the case of a stationary informal street trader, place his or her goods or equipment within the boundary of the demarcated stand allocated to him or her;
- o) shall, when he or she concludes business for the day, remove his or her property, except if stored in any structure approved or permitted by the Municipality, to a place not part of the public road or public amenity;
- p) shall not carry on the business of an informal trader in the sale of counterfeit and pirated goods as provided for in the Counterfeit Goods Act and the Copyright Act, 1997 (Act 37 of 1997).

5. Rent, fees and charges.

The Municipality shall fix the rent charges 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 informal street trading vendor or hawker is permissible.

6. General restrictions

- 1. A person carrying on the business of an informal trader may not –
 - a) If such a business is carried on in a public road or public space –
 - i. overnight at the place of such business;
 - ii. erect a structure for the purpose of providing shelter.
 - b) Carry on such business in a manner so as to –
 - i. damage or deface the surface of any public road or any public space or any public or private property;
 - ii. create a traffic hazard;
 - iii. obstruct access to municipal service or works;
 - iv. obstruct access to a pedestrian arcade or mall;
 - v. obscure any road traffic sign displayed in terms of the National Road Traffic Act, 1996 (Act 93 of 1996), and the regulations made there under or any marking or display made in terms of this by-law;
 - vi. make a fire in a public space or road for informal trading purposes where it can

harm any person or damage a vehicle or building or property referred to in this by-law, and not be in possession of a health and safety certificate.

- vii. fail or refuse to remove or move any property after having requested to do so by the supplier of a telecommunication supplier who requires access to such a service, or by any authorized agent or employee of the Municipality or an officer acting in terms of this by-law;
- viii. obstruct the visibility of a display window of business premises, if the person carrying on the business in such business premises objects thereto;
- ix. obstructs access to street or park furniture or the use of street furniture such as benches, refuse disposal bins, and other facilities designed for the use by the general public;
- x. accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or depositing of any litter on any land or premises or in any public road or public space other than in a refuse receptacle approved and provided for by the Municipality;
- xi. to create a nuisance, damage or deface the surface of a public road or public amenity or public or private property; or create a traffic hazard;
- xii. attach an object by any means to a building, structure, sidewalk, 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 amenity.
- xiii. to trade at intersections.

7. Cleanliness and protection of public health -

1. Every informal trader shall comply with the National Health Act, 2003 (Act 61 of 2003) and the regulations made there under -
 - a) by carrying on his or her business in a manner so as not to be a danger or threat to the public health and safety;
 - b) keep the unit occupied by him or her for the purpose of his or her informal trading as well as his or her property in a clean and sanitary condition and free of litter;
 - c) if the informal trader's activities include the preparation and cooking of food, ensure that the necessary steps be taken to ensure that no fat, oil or other substance drops or overflows on the surface of any public road or public space or reflects onto a structure or building;

- d) at the request of a municipal employee, move his or her property in order to permit the cleaning of the surface of the unit where he or she is trading.

2. The Municipality shall –

- a) ensure that the units on which the informal traders are trading, are cleaned on a regular basis;
- b) provide receptacles in the area near the units in order to facilitate the disposal of litter;
- c) ensure that the receptacles are emptied on a regular basis to facilitate the cleaning of the units.

8. Removal and impoundment

1. If a person carrying on the business of informal trader fails or refuses to comply with a written request, the contents of which have been explained to him or her, to remove his or her property, or leave such property unsupervised for a period of more than 24 hours, an officer may remove and impound such property –

- a) which he or she reasonably suspects is being used or is intended to be used or has been used in or in connection with the carrying on of a business of informal trader;
- b) which he or she finds in an area where the carrying on of such business is restricted or prohibited in terms of the provisions of the by-law.

2. Any person acting in terms of these provisions shall –

- a) except in the case of property which have been left abandoned, issue forthwith to the person carrying on the business of an informal trader a detailed receipt for any property so removed or impounded, which receipt shall contain adequate information as to where the property will be impounded and the procedure for reclaiming the property, and
- b) deliver any such property to the Municipality.

3. Any property removed or impounded in terms of section 6A of the Act –

1. may in the case of perishable goods be sold or destroyed after a reasonable time of its impoundment for health reasons, but only if all reasonable steps have been taken and exhausted to locate the owners of the perishable goods, and only if at any time prior to the disposal thereof the owner has not provided instructions for the return of the goods, and provided the necessary proof of ownership.

2. shall in the case of property other than perishable goods, be returned to the owner thereof at his or her request and on providing proof of ownership to the Municipality within one month from date of impoundment.

4. The Municipality shall be entitled to keep the property until all reasonable expenses have been paid to the Municipality, failing which the property may be sold, or in the case of perishable goods sold or destroyed by the Municipality.
5. In the case of the sale of impounded property by the Municipality, the proceeds of such sale less the reasonable expenses incurred by the Municipality in connection with the removal, impoundment and disposal of the said property, shall be paid to the owner of the property. If such owner fails to claim the proceeds within one month on which the property was sold, the proceeds shall be forfeited to the Municipality and shall be paid into a special fund created by the Municipality dedicated to the development of the informal sector and matters ancillary thereto.
6. The owner shall be liable for all reasonable expenses incurred by the Municipality in connection with the removal, impoundment and disposal in connection with such property.
7. Any person who hinders or obstructs an official in the performance of his or her duties under this section, or who refuses or fails to remove the object when ordered to do so by an official, commits an offence.

10. **Appeals**

A person whose rights have been affected by the Municipality in terms of this by-law, may appeal against the decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Municipal Systems Act (Act 32 of 2000) to the Municipal Manager within 21 days of the date of the notification of the decision.

11. **Penalties**

Any person who contravenes any provision or fails to comply with any provision of this by-law commits an offence and shall on conviction be liable to –

- a) a fine or imprisonment, or to both such fine and imprisonment,
- b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional period of imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued,
- c) a further amount equal to any cost and expenses found by the court to have been incurred by the Municipality as a result of such contravention or failure,
- d) a warning, a suspension for a specified period, or the total withdrawal of such trading permit.

12. **Repeal of by-laws**

The provisions of any by-law previously promulgated by the Municipality or the previously disestablished municipalities, are hereby repealed in so far as they relate to matters provided for in this bylaw, and insofar as it has been made applicable to the Municipality by the authorization for the execution of powers and functions in terms of section 84(3) of the Municipal Structures Act.

13 Short title and commencement

This by-law shall be known as the By-law relating to Informal Trading of the Overstrand Municipality, 2013 and shall come into operation on the date of publication thereof in the Provincial Gazette.