

**BERGRIVIER MUNICIPALITY
INFORMAL TRADING BY-LAW**

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

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1. Definitions

In this by-law, unless the context indicates otherwise, a word or an expression to which a meaning has been assigned in the Businesses Act, 1991 (Act 71 of 1991), shall have that meaning, and unless the context indicates otherwise—

“**goods**” means any commodities, articles, receptacles, vehicles or structures used or intended to be used for informal trading;

“**informal trader**” means any person who carries on the business of street vendor, pedlar or hawker and includes any employee of such a person and, for the purposes of this by-law, also includes any person who trades in a public space;

“**informal trading**” means the selling of any goods or the supply or offer to supply any service for reward as an informal trader in a public road or public space, excluding the sale of newspapers only;

“**informal trading centre**” means an area, place or infrastructure provided by the municipality itself, or in conjunction with any other organisation or body for the purposes of informal trading;

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

“**municipality**” means the municipality of Bergrivier, established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorized agent or any employee 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;

“**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 their ordinary comfort, business convenience, peace or quiet;

“**officer**” means—

- (a) a traffic officer appointed under section 3(1)(a) of the Road Traffic Act, 1989 (Act 29 of 1989);
- (b) a member 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); or

“**property**” in relation to an informal trader, means any money, goods, receptacle, vehicle or movable structure used or intended to be used in connection with the carrying on of his or her business as such;

“**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 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 least thirty years since the thirty-first day of December 1959; or
- (d) 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);

“**the Act**” means the Businesses Act, 1991 (Act 71 of 1991) read with its Schedules;

“**unit**” means the space from which an informal trader may conduct his or her business and which is not greater than 3 metres in length and 2 metres in width, and

“verge” means that portion of a road, street or thoroughfare which is not the roadway.

2. Purpose of By-Law

The Municipality, acting in terms of section 6A(1)(a)(i) of the Businesses Act, 1991 (Act 71 of 1991), and—

- (a) having regard to the principles set out in the Act and in the Constitution;
- (b) taking into consideration the need of the residents to actively participate in economic activities; and
- (c) taking into consideration the need to maintain a clean, healthy and safe environment, in this by-law provides mechanisms, procedures and rules to manage informal trading.

3. General conduct

(1) A person carrying on the business of informal trader—

- (a) may not place his or her property on a public road or public space except for the purpose of conducting trade;
- (b) must ensure that his or her property does not cover an area of a public road or public space which is greater than 3 metres x 2 metres;
- (c) may 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) may not carry on the business of informal trader on a verge contiguous to—
 - (i) a church, mosque or other place of worship; or
 - (ii) a building declared to be a national monument in terms of the National Heritage Resources Act, 1999 (Act 25 of 1999); except to the extent that the carrying on of such business is permitted in terms of this by-law;
- (e) may not carry on the business of informal trader 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;
- (f) may not carry on the business of informal trader at a place where it substantially obstructs pedestrians in their use of a sidewalk;
- (g) may not carry on the business of informal trader at a place where it causes an obstruction to vehicular traffic;
- (h) may not carry on the business of informal trader at a place where it causes an obstruction in front of—
 - (i) an entrance to or exit from a building; or
 - (ii) a fire hydrant;
- (i) may not carry on the business of informal trader without being in possession of written proof that he or she hired, or was otherwise allocated that stand or area by the municipality in an area set aside by the municipality; and
- (j) may not carry on the business of informal trader in contravention of—
 - (i) the terms and conditions of the lease or allocation to him or her of a unit in terms of section 6A(3) of the Act; or
 - (ii) any policy that the municipality may determine for the operation of an informal trading centre.
- (k) may not carry on the business of informal trader in an area which has been declared a restricted or prohibited area in terms of section 6A(2)(a) of the Businesses Act, 1991.

4. Rent

The municipality shall fix the rent payable to it for the letting of stands or units in demarcated areas or informal trading centres under its control from where the carrying on of the business of street vendor, pedlar or hawkker is permissible.

5. General restrictions

(1) A person carrying on the business of informal trader may not—

- (a) if such business is carried on in a public road or public space—
 - (i) overnight at the place of such business; or
 - (ii) erect a structure (other than a device which operates in the same manner as, and is shaped like an umbrella) for the purpose of providing shelter;
- (b) carry on such business in a manner 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; or
 - (iii) create a nuisance;
- (c) accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any litter on any land or premises or in any public road or public space other than in a refuse receptacle approved or provided by the municipality;
- (d) obstruct access to a municipality service or service works;
- (e) obstruct access to a pedestrian arcade or mall;
- (f) obstruct access to pedestrian crossings, parking or loading bays or other facilities for vehicular or pedestrian traffic;

- (g) obstruct access to street furniture or the use of street furniture such as bus passenger benches or shelters, refuse disposal bins, and other facilities designed for the use of the general public;
- (h) 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, notice or sign displayed or made in terms of this by-law;
- (i) 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 a public road or public space;
- (j) make a fire in a public road or public space under circumstances where it could harm any person or damage a building or vehicle or any street furniture referred to in this by-law;
- (k) fail or refuse to move or remove any goods after having been requested to do so by the supplier of an telecommunication service who requires access to such service, or by an authorized employee or agent of the municipality or an officer acting in terms of this by-law, and
- (l) obstruct the visibility of a display window of a business premises, if the person carrying on business in such business premises objects thereto.

6. Cleanliness and protection of public health

- (1) Every informal trader must—
 - (a) carry on his or her business in a manner as not to be a danger or threat to public health or public safety;
 - (b) at the request by an employee of the municipality move his or her property in order to permit the cleaning of the surface of the unit where he or she is trading;
 - (c) keep the unit occupied by him or her for the purpose of his or her business as well as his or her property in a clean and sanitary condition and free of litter; and
 - (d) if his or her activities involve the cooking or preparation of food, take steps to ensure that no fat, oil or other substance drops or overflows onto the surface of any public road or public space or splashes against a building or structure.
- (2) The municipality must—
 - (a) ensure that the units on which the informal traders trade are cleaned and sanitized on a regular basis;
 - (b) provide receptacles in the area near the units in order to facilitate the disposal of litter by informal traders, and
 - (c) ensure that the receptacles are emptied on a regular basis in order to facilitate the cleaning of trading units.

7. Trading in parks and gardens

No informal trader shall carry on business in a garden or park to which the public has the right of access, except with the prior written approval of the municipality, which approval shall not be unreasonably withheld and may be granted subject to certain conditions.

8. Objects used for display of goods

- (1) An informal trader shall ensure that any structure, container, surface or other object used by him or her for the preparation, display, storage or transportation of goods—
 - (a) is maintained in a good state of repair and kept in a clean and sanitary condition, and
 - (b) is not so placed or stacked as to constitute a danger to any person or to be likely to injure any person.

9. Removal and impoundment

- (1) If a person carrying on the business of informal trader fails or refuses to comply with a written request, the content of which has been explained to him or her, to move or remove his or her property, or leaves such property unsupervised for a period of more than 8 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 the business of informal trader; or
 - (b) which he or she finds in a place where the carrying on of such business is restricted or prohibited in terms of a provision of this by-law.
- (2) Any officer acting in terms of these provisions shall—
 - (a) except in the case of goods which have been left or abandoned, issue forthwith to the person carrying on the business of an informal trader a detailed receipt for any property so removed and impounded, which receipt shall contain adequate information as to where the property will be impounded and the procedure for reclaiming such property, and
 - (b) forthwith deliver any such property to the municipality.
- (3) Any property removed and impounded as contemplated by section 6A of the Act—
 - (a) may, in the case of perishable property, be sold or destroyed by the municipality within a reasonable time after its impoundment, provided that such property shall, subject to the provisions of subsection (4), at any time prior to the disposal thereof, be returned to the owner at his or her request and upon providing proof of ownership by such owner to the municipality, and
 - (b) shall, subject to the provisions of subsection (4), in the case of property other than perishable property, be returned to the owner thereof at his or her request and on providing proof of ownership by such owner to the authority within a period of one month of the 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 property, either be sold or destroyed by such municipality.

- (5) In the case of a sale of impounded property by a municipality, the proceeds of such sale less the reasonable expenses incurred by the municipality in connection with the removal, impoundment or disposal of the said property, shall be paid to the owner of the property. If such owner fails to claim the proceeds within three months of the date 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) If the proceeds of any sale of property contemplated in subsection (5), are not sufficient to defray the reasonable expenses incurred by the municipality in connection with such property, the owner of such property shall be liable for all reasonable expenses incurred by the municipality concerned in connection with such removal, impoundment or disposal.

10. Appeal

A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefor in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

11. Offences and Penalties

A 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 either such fine or imprisonment or to both such fine and such imprisonment and,
- (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued and,
- (c) a further amount equal to any costs and expenses found by the court to have been incurred by the municipality as result of such contravention or failure.

12. Liaison forums in community

- (1) The municipality may establish one or more liaison forums in a community for the purposes of obtaining community participation with regard to the matters dealt with in this by-law.
- (2) A liaison forum may consist of—
 - (a) a member of members of an interest group, or an affected person;
 - (b) a designated official or officials of the municipality; and
 - (c) a councillor.
- (3) (a) The municipality may, when considering an application for consent, permit or exemption in terms of this by-law, request the input of a liaison forum.
(b) A liaison forum or any person may on own initiative submit an input to the municipality for consideration.

13. Conflict with other legislation

In the event of any conflict between any provision of this by-law and National and Provincial legislation, standards, policies or guidelines, the National and Provincial legislation, standards, policies or guidelines shall prevail.

14. Repeal of by-laws

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality, are hereby repealed as far as they relate to matters provided for in this by-law, and insofar as it has been made applicable to the municipality by the authorisation for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998.

15. Short title and commencement

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