

THEEWATERSKLOOF MUNICIPALITY

INFORMAL TRADING BY-LAW

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 the Municipal Council of the Theewaterskloof Municipality, hereby enacts as follows:

PREAMBLE

The purpose of this by-law is to regulate informal trading in the area of jurisdiction of the Theewaterskloof Municipality, and to provide for matters related thereto.

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1. INTERPRETATION

In this by-law, the English text prevails in the event of any conflict with the Afrikaans text, and any word or expression to which a meaning has been assigned in the Businesses Act, 1991 (Act No 71 of 1991), as amended, shall have the same meaning in this by-law, and unless the context indicates otherwise -

“Court”, means a Magistrates Court, as referred to in section 166(d) of the Constitution of the Republic of South Africa, 1996, with jurisdiction in the area of the Theewaterskloof Municipality;

“informal trade”, which for purpose of this by-law also include reference to **“trading activity”**, means the trade in goods and services in the informal business sector by informal traders, in different ways and at different demarcated units, sites and localities, which include, but is not limited to -

- (a) street trading;
- (b) trading in or at shopping centers;
- (c) trading at markets;
- (d) trading at road crossings;
- (e) trading at public amenities and public places of the Theewaterskloof Municipality, as contemplated in the Public Amenities By-law of the Theewaterskloof Municipality;
- (f) mobile trading from caravans, trailers or light commercial vehicles;
- (g) traveling traders;
- (h) trading at special events; and
- (i) trading on specific reserved premises designated by the Theewaterskloof Municipality;

“informal trader”, means any person or enterprise, that is not registered or incorporated in terms of any corporate legislation of the Republic of South Africa, who trade informally, and includes any reference to a **“hawker”** or a **“street vendor”**;

“informal trading area”, means an area, a place, a center or infrastructure provided by the Theewaterskloof Municipality, or in association with any other institution or organization for the purpose of informal trading;

“Municipality”, means the Theewaterskloof Municipality, and includes reference to any duly delegated and / or appointed officials and / or service providers in terms of service level agreements of the Theewaterskloof Municipality;

“official”, means -

- (a) a traffic official appointed in terms of section 3A of the National Road Traffic Act, 1996 (Act No 93 of 1996), as amended;
- (b) a member of the South African Police Service as contemplated in terms of section 1 of the South African Police Services Act, 1995 (Act No 69 van 1995), as amended,
- (c) a peace officer, as authorized in terms of section 334 of the Criminal Procedures Act, 1977 (Act No 51 of 1977), as amended, or
- (d) any employee of the Theewaterskloof Municipality, who is authorized by the Theewaterskloof Municipality to enforce the provisions of this by-law;

“prohibited area”, means any place or area, where street trading is prohibited or restricted per resolution of the Municipality;

“property”, means with regard to the property of an informal trader, any goods, merchandise, articles, stock, equipment, containers, vehicles or removable structures, which are used or are intended for use by such trader for business;

“public nuisance”, means any action, omission or condition, on or at any premises or a public place or a public road, including any reference to any building or structure on such premises, public place, or public road, which can put the safety of persons or property in jeopardy or which is unsightly, annoying, offensive or a disturbance for other persons, and includes a **“nuisance”**;

public place”, means any premises or property or land, under the control of the Theewaterskloof Municipality, to which the public have access, and includes, but are not restricted to: any square; building; park; sports ground; open space; recreational area; nature reserve; municipal street, alley or road reserve; public road; parking area, municipal commonage; unused, used, build-up or vacant municipal land; or a cemetery;

“public road”, means any public road as referred to in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996), as amended, and includes any municipal road, alley or road reserve;

“road verge”, means the portion of a road, a street, an alley or a corridor not used as road surface by vehicles;

“sidewalk”, means the portion of a street between the outer boundary of the paved surface of a road and the boundaries of the adjacent premises or buildings;

“site”, has a similar meaning as **“unit”**;

“the Act”, means the Businesses Act, 1991 (Act No 71 of 1991), as amended, read together with the schedules thereto;

“unit”, means the space from where an informal trader may trade from, with dimensions as determined from time to time by the Theewaterskloof Municipality;

“waste”, any trash, containers, waste material or any other object or waste left or discarded by an informal trader and / or his or her clients;

2. PURPOSE OF BY-LAW

The Municipality acting in terms of the provisions of section 6A(1)(a)(i) of the Businesses Act, 1991 (Act No 71 of 1991), as amended, and taking in consideration -

- (a) the principles as stipulated in the Act and other statutory stipulations;
- (b) the need of the residents of the area of jurisdiction of the Municipality to be actively involved in economic activities; and
- (c) the objectives of the Municipality to ensure a clean, healthy and safe environment for the residents of the area of jurisdiction of the Municipality,

intent to provide with this by-law mechanisms, procedures and rules, to manage informal trading in the area of jurisdiction of the Municipality.

3. GENERAL CONDUCT

- (1) A person who operate a business as an informal trader –
 - (a) may not display his or her goods or services on a public road or a public place for the purpose of trading, except on such places which are specifically designated by the Municipality for informal trading;
 - (b) shall insure that his or her property do not occupy an area on a public road or a public place or at any other informal trading area, which is bigger than the allocated area for a unit or site for informal trading, as determined from time to time by the Municipality;
 - (c) may not obstruct access to a fire hydrant, or any other purpose specific equipment, facility or area, provided or demarcated exclusively for use by emergency vehicles or emergency services;
 - (d) may not trade as an informal trader on a road verge or a sidewalk within a distance, determined by the Municipality for each site or unit concerned, from the boundary of –
 - (i) a church, mosque or any other place of worship;
 - (ii) any cemetery; or
 - (iii) a building, terrain or area which has been declared a national heritage site in terms of the National Heritage Resources Act, 1999 (Act No 25 of 1999), as amended,except where such informal trading are specifically allowed in terms of this by-law on such road verge or sidewalk;

- (e) may not trade on a public road or a public place, adjacent to premises used for residential purposes in a residential area, when the owners or occupants of such residential premises submitted objections against the area being used for informal trading, until the merit of such objections have been considered by the Municipality;
 - (f) may not trade on a place, where the trading activity shall obstruct the use of a sidewalk by pedestrians;
 - (g) may not trade on a place, where the trading activity shall obstruct vehicular traffic;
 - (h) may not trade on a place, where the trading activity shall obstruct the entrance and exit of a building or a premises;
 - (i) may not trade on any place, without being in possession of written proof that he or she has been leased the site or unit concerned by the Municipality, or that such site or unit has been allocated to such trader by the Municipality or the institution who act as the lessor thereof;
 - (j) may not trade with a product, within a distance determined by the Municipality for each site or unit concerned, from a formal business on a business premises who sells a similar product;
 - (k) may not prepare or gut any fish, or prepare any meat or any other perishable product on a unit or site used for trading activities; and
 - (l) may not trade in conflict with -
 - (i) the stipulations and conditions of a rental contract and / or the conditions of an allocation for a unit or a site; or
 - (ii) any policy of the Municipality for the management of an informal trading area.
- (2) A person may not trade as an informal trader in an area, which has been declared by the Municipality as a prohibited area.
- (3) A person may not trade as an informal trader on a national road, a provincial road, a subordinate road or any other road reserve over which the Municipality does not have jurisdiction, without the approval of the road authority concerned to trade from a specific site.

4. RENTAL

The Municipality shall annually in terms of the Tariff By-law of the Theewaterskloof Municipality determine, the rental payable for the lease of sites or units for informal trading by informal traders, hawkers or street vendors, within demarcated areas on public roads and public places under the control of the Municipality or in informal trading areas under the control of the Municipality or any other institution in terms of any service delivery agreements for the management of such informal trading areas on behalf of the Municipality.

5. GENERAL RESTRICTIONS

A person who is trading as an informal trader may not –

- (a) where an informal trading business is operated in a designated informal trading area, or where special permission has been granted by the Municipality for trading on a public road or a public place -
 - (i) overnight on such place of business; or
 - (ii) erect any structure for cover, without the prior approval of the Municipality;
- (b) operate his or her business in such a way that –
 - (i) the surface of a public road or a public place or any public or private property is damaged or defaced;
 - (ii) a danger is created for pedestrian and vehicular traffic; or
 - (iii) a public nuisance is created;
- (c) collect, dispose, stock-pile or place any litter or perishable products on any unit or site used for trading activities, or allows that such litter or perishable products are collected, disposed, stock-piled or placed there;
- (d) restrict the access to any municipal service or service infrastructure of the Municipality;
- (e) restrict the access to a pedestrian arcade or any premises;
- (f) restrict the access to pedestrian crossings, parking, loading zones or other facilities for vehicular and pedestrian traffic;
- (g) restrict or prevent the access to or use of street accessories and furniture, provided for use by the general public;
- (h) block any road sign or road marking from view, which have been installed in terms of the Road Traffic Act, 1996 (Act No 93 of 1996), as amended, and the

regulations promulgated in terms thereof, or obstruct any sign or notice posted terms of the provisions of this by-law;

- (i) fasten or affix any object or structure, to any building, structure, sidewalk, street tree, parking meter, lamp post, electricity pole, telephone cubicle, post box, street bench, traffic sign or any other street accessories and furniture, in or on a public road or a public place;
- (j) make a fire on a public road or a public place, except where specific facilities for open fires have been provided;
- (k) refuse or fail to move or remove his or her property and goods, from in front of a telecommunication facility, when requested to do so by an authorized official who require access to such facility; and
- (l) block the visibility of an exhibition window or an advertising sign of a business premises.

6. CLEANLINESS AND THE PROTECTION OF PUBLIC HEALTH AND SAFETY

- (1) Every informal trader shall –
 - (a) operate his or her business in such a way, that it cause no hazard or threat for public health or public safety;
 - (b) on request of an official, move his or her property from the unit or site used by him or her for trading activities, to allow for the surface of such unit or site to be cleaned for the sake of tidiness and public health;
 - (c) keep the unit or site used by him or her for trading activities, as well as his or her property used for trading, clean, neat and litter free, and dispose of all waste in a manner prescribed by the Municipality;
 - (d) subject to the nature of services rendered, and / or the goods and products offered for sale, implement the necessary fire safety measures at the unit or site used for trading, and shall provide proof of such fire safety measure on request of an authorized official;
 - (e) when the trading activities of an informal trader include the cooking, preparation and sale of food, such informal trader shall have an applicable license from the responsible authority for the preparation and sale of food, and shall comply to the statutory conditions and requirements for food preparation, food packaging and the sale of food; and
 - (f) when the trading activities of an informal trader include the cooking, preparation and sale of food, such informal trader shall implement steps to

ensure that no fat or cooking oil or any other ingredient, are dropped or spilled on any surface of any public road or public place or are splashed against any adjacent building or structure.

(2) The Municipality shall -

- (a) ensure that the units and sites used by informal traders for trading, are regularly cleaned;
- (b) waste bins are provided in the area near units or sites for informal trading, and assist with the removal of litter and waste; and
- (c) ensure that waste bins are cleaned regularly, to ensure cleanliness and hygiene.

7. DELIMITED AREAS

The Municipality may from time to time per resolution, designate delimited areas for the purpose of informal trading.

8. PROHIBITED AREAS

- (1) Subject to any policy and / or other directives determined by the Municipality, no informal trader may trade in a declared prohibited area.
- (2) A Municipality may from time to time per resolution, decide to declare prohibited areas for informal trading or lift the prohibition on informal trading in a prohibited area or allow restricted informal trading in a prohibited area.

9. INFORMAL TRADING IN PUBLIC GARDENS, PUBLIC PARKS AND OPEN SPACES

No informal trader may trade in a public garden or a public park or a public open space, to which the general public has a right of access, except with the prior written approval of the Municipality and subject to such conditions as the Municipality may impose, which approval shall not be unreasonably withheld.

10. EQUIPMENT USED FOR THE EXHIBITION OF GOODS

- (1) An informal trader shall ensure that all structures, containers, surfaces or other equipment, used for the preparation, storage, exhibition, stockpiling or transport of goods, are kept in a good, clean and hygienic condition.

- (2) Goods for informal trading shall be stowed or stockpiled for storage or exhibition in such a way, that it do not pose a danger to persons or can cause injury to any person.

11. REMOVAL AND THE IMPOUNDING OF THE PROPERTY OF AN INFORMAL TRADER

- (1) When a person who is an informal trader, fails or refuse to comply to a lawful request of an authorized official in terms of the provisions of this by-law, to move or remove his or her property and / or goods, as a result of –
- (i) the non-payment of the applicable rental fees for a unit or site;
 - (ii) illegal trading in a place where informal trading are in terms of the provisions of this by-law restricted or forbidden;
 - (iii) the continuous transgression of any of the provisions of this by-law; or
 - (iv) leaving his or her property and / or goods unattended on a unit or site without supervision, for more than eight (8) hours,
- an official may remove and impound such property and / or goods of the informal trader concerned, or arrange for the removal and impoundment of such property and / or goods -
- (a) after the content of the instruction for the moving or removing of property and / or goods, have been explained to the informal trader;
 - (b) after the official concerned ensured that the property and / or goods to be removed and impounded, have been within reason used or were intended to be used for the business operation of the specific informal trader; and
 - (c) found by the official concerned at the place where such informal trading was restricted or prohibited.
- (2) An authorized official who acts in terms of subsection 11(1) of this by-law, shall –
- (a) be properly authorized in writing;
 - (b) except where property and / or goods which have been abandoned are removed and impounded, immediately provide the transgressor concerned with a detailed receipt of the property and / or goods removed and impounded, which receipt shall contain comprehensive information where the impounded property and / or goods shall be stored and the procedures for the reclaiming of such property and / or goods; and
 - (c) the property and / or goods impounded, shall immediately be handed over to the Municipality for safekeeping.

- (3) Any property and / or goods impounded in terms of subsection 11(2) of this by-law –
- (a) shall be kept by the Municipality at a place of safekeeping and in the case of perishable products be stored in cold storage, and a proper register shall be kept of all property and / or goods which are stored as such;
 - (b) may in the case of perishable products impounded by the Municipality, be destroyed within twenty one (21) days, after written notice has been given to the owner of the products concerned, where the contact particulars of such owner is known, and on condition that subject to the provision of subsection 11(4) of this by-law, the property and / or goods may be reclaimed by the owner of such products before the disposal thereof –
 - (i) when requested by such owner;
 - (ii) on submission of proof of ownership; and
 - (iii) on payment of the penalties and costs incurred by the Municipality for the removal, impounding, storage and safekeeping of such perishable products,and such products shall then be handed over to the owner thereof; and
 - (c) in the case of any property and / or goods other than perishable products impounded by the Municipality, after written notice has been given to the owner of the products concerned, where the contact particulars of such owner are known, the property and / or goods shall be returned to the owner thereof within a period of thirty (30) days after the date of impoundment of such property and / or goods, subject to the provisions of subsection 11(4) of this by-law, and on condition that the property and / or goods shall only be returned to the owner, on submission of proof of ownership, and on payment of the penalties and the costs incurred by the Municipality for the removal, impounding, storage and safekeeping of such property and / or goods, and such property and / or goods shall only then be handed over to the owner thereof.
- (4) The Municipality shall be entitled to retain the property and / or goods impounded in terms of subsection 11(2) of this by-law, until all the penalties involved and the reasonable costs incurred by the Municipality have been paid, and by failure thereof the Municipality may sold the involved property and / or goods per public auction, or in the case of perishable products destroy it.
- (5) The Municipality shall when non-perishable products and other property and / or goods, have not been claimed by the owner thereof within thirty (30) days of written notice of the impoundment thereof to such owner, or by failure of the owner of such property and / or goods to pay the required penalties and the costs owed to the Municipality for the impoundment of such property and / or goods, or when the owner cannot be traced, apply to the Court to sell the

property and / or goods concerned by means of public auction, to recover costs, and the Municipality shall -

- (a) provide proof to the Court in such application, that a calculation of costs as contemplated in sub-section 11(3)(c) of this by-law, has been provided to the owner of the property and / or goods, where the contact particulars of the owner has been known; and
 - (b) bring an application to the Court to sell the property and / or goods concerned in terms of the provisions of this by-law, which shall comply to the procedures contained in Rule 55 of the Magistrate's Court Act, 1944 (Act No 32 of 1944), as amended, on condition that the application concerned may be brought *ex parte*, when the Municipality can provide proof that in spite of all reasonable efforts, the owner of the property and / or goods could not be found.
- (6) When the Court is satisfied that the provision of this by-law with regard to the impoundment of the goods concerned has been complied with, the Court may order the sale of the involved property per auction, as provided for in this by-law.
- (7) The Court shall, irrespective whether the calculation of costs as contemplated in subsection 11(3)(c) of this by-law, is in dispute or not –
- (a) summarily investigate the matter;
 - (b) where the particulars of the owner of the property and / or goods concerned are known, determine whether the Municipality has given the owner concerned proper notice of the costs associated with the impoundment and the safe keeping of the property and / or goods; and
 - (c) make an order as it considers just and equitable, including an order –
 - (i) as to costs; and
 - (ii) on the process to be followed by the Municipality in the sale of the goods concerned.
- (8) At each such authorized auction of property and / or goods that has been impounded -
- (a) only property and / or goods ordered by the Court to be sold, may be offered for sale;
 - (b) property and / or goods shall be sold for cash; and
 - (c) the total proceeds of the fees and monies contemplated in section 11 of this by-law, shall be deposited in the municipal revenue fund,

(9) The Municipality shall -

- (a) give notice in a newspaper published in the area of jurisdiction of the Municipality, when approval has been granted by the Court for the sale of such impounded property, of the intended sale of the impounded property and / or goods at a public auction, and such notice shall specify the date, time and place of the auction;
- (b) provide particulars in the notice of the property and / or goods that is available for public auction; and
- (c) recover the costs for the notice contemplated in subsection 11(9)(a) of this by-law from the owner of the property and / or goods impounded, or recoup such costs from the proceeds of the public auction of the property and / or goods concerned.

(10) The Municipality shall pay the remainder of the proceeds of an auction to the owner of the impounded property and / or goods, after all penalties and costs of the Municipality have been subtracted, and when such owner fail to claim the money involved within three (3) months after the date of the auction, or cannot be traced, the proceeds shall be forfeit to the Municipality.

(11) When the costs of the Municipality cannot be recovered from the proceeds of an auction, the owner of such property and / or goods shall remain liable for the payment thereof.

12. EXEMPTIONS

(1) The owner or occupier of a premise may apply in writing to the Municipality to be exempted from any provision of this by-law.

(2) The Municipality may –

(a) grant any exemption in writing, and determine the conditions, extend and period for which such exemption has been granted, or determined;

(b) alter or cancel any exemption or condition in an exemption; or

(c) refuse to grant any exemption, or only approve it in part.

(3) An exemption does not take effect before the applicant has undertaken in writing to comply with the conditions imposed by the Municipality, and when an activity is commenced with before such undertaking has been submitted to the Municipality, such exemption granted shall lapse.

- (4) When any conditions of an exemption is not complied to, the exemption shall lapse immediately.

13. APPEALS

A person whose rights are affected by a decision of the Municipality in terms of any delegated powers, may appeal against such a decision in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), as amended, by giving written notice of the appeal against such a decision and the reasons for the appeal to the Municipal Manager, within twenty one (21) days of the date of the notification of the decision.

14. OFFENCES AND PENALTIES

Any person who contravenes or fails to comply with any provision of this by-law, or fails to comply with an instruction of an authorized officer or an instruction posted on a notice board, or fails to comply with any notice served in terms of this by-law or obstructs an authorized official in the execution of his or her duties in terms of this by-law, is guilty of an offence and is liable on conviction for –

- (a) a fine or imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment;
- (b) in the case of a successive or continuing offence, to an additional fine or additional period of imprisonment, or such additional imprisonment without the option of a fine, or to both such additional fine and such additional imprisonment, for every day such offence continues; and
- (c) any further amount as an order of court for costs, equal to any costs and / or expenses, deemed by the Court, to have been incurred by the Municipality as a result of such contraventions.

15. SERVING OF NOTICES AND OTHER DOCUMENTS

- (1) A notice, instruction, letter of demand, or other document issued by the Municipality in terms of this by-law, is deemed to be duly issued when a duly delegated official of the Municipality has signed it.
- (2) Any notice, instruction, letter of demand, or other document that is served on a person in terms of this by-law, is regarded as having been duly and effectively served –
 - (a) when it has been delivered to that person personally;

- (b) when it has been left at that person's place of residence or business in the Republic of South Africa, with a person apparently older than sixteen years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic of South Africa, and proof of the posting thereof is provided;
 - (d) if that person's address in the Republic of South Africa is unknown, when it has been served on that person's agent or representative in the Republic of South Africa, in a manner as provided in subsections 15(2)(a), 15(2)(b) or 15(2)(c) of this by-law;
 - (e) if that person's address and agent or representative in the Republic of South Africa is unknown, when it has been posted in a conspicuous place on the property or premises to which it relates; or
 - (f) in the event of a body corporate, when it has been delivered at the registered office or the business premises of the body corporate.
- (3) When any notice, instruction, letter of demand, or other document is served on a person in terms of this by-law, it is sufficient for purpose of the serving of the notice, instruction, letter of demand or other document, to describe the person in the notice, instruction, letter of demand or other document, as the owner, occupant, or holder of the property or rights in question, and it is not a requirement to name that person.
- (4) A notice, instruction, letter of demand, or other document shall for purpose of authentication, be properly signed by the Municipality.

16. COMMUNITY LIAISON FORUMS

- (1) The Municipality may establish liaison forums in a community for the purpose of –
- (a) creating opportunities for the community to participate in the affairs of the Municipality, with regard to the matters related to this by-law;
 - (b) to advise the Municipality on matters, referred to a liaison forum by the Municipality;
 - (c) the promotion of a safe and healthy environment for informal trading; and
 - (d) promoting the achievement of properly controlled and administered informal trading.

- (2) A liaison forum may consist of –
- (a) a member or members of an interested group, or affected persons;
 - (b) a member or members of the community; and
 - (c) a designated official or officials of the Municipality, or other organs of state.
- (3) (a) The Municipality may, when considering an application for an approval or a permit in terms of this by-law, request the input of a community liaison forum.
- (b) A liaison forum or any person or persons contemplated in subsection 16(2) of this by-law, may on their own initiative provide input to the Municipality for consideration.
- (c) The Municipality may institute specific liaison forums for informal traders, to assist the Municipality with the regulating of informal traders.

17. CONFLICT BETWEEN LEGISLATION

When any stipulation of this by-law, is in conflict with national and provincial legislation or regulations, the national and provincial legislation or regulations shall prevail.

18. REPEAL OF BY-LAWS

- (1) 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.
- (2) The following by-law of the Theewaterskloof Municipality is hereby specifically repealed -

Date published	Name of by-law	As a whole or partially
PG 6234 dated 8 March 2005	Street Trading By-law	As a whole

19. SHORT TITLE

This by-law shall be called the Informal Trading By-law of the Theewaterskloof Municipality.

20. OPERATIVE DATE

This by-law shall take effect on the date of publication.