

BELA BELA LOCAL MUNICIPALITY



***DRAFT BY-LAW IN RESPECT TO INFORMAL TRADERS
MANAGEMENT BY-LAWS***

2014/15 FIN YEAR

BELA BELA MUNICIPALITY

The Council of the Bela Bela Local Municipality has in terms of Section 156 of the Constitution, 1996 (Act 108 of 1996), read in conjunction with section 11 of the Municipal System Act, 2000 (Act no 32 of 2000), made the following by-law

STREET TRADING BY-LAW

CHAPTER 1

INTERPRETATION AND FREEDOM OF TRADE

1. Definitions

In this by-law, unless the context otherwise indicates -

“authorized official” means an official of the Council authorized to implement the provisions of this by-law;

“Council” means the Council of the Bela Bela Local Municipality and its successors in law, and includes the Council of that Municipality / or its Executive Committee or other body acting by virtue of any power delegated to it in terms of legislation, as well as any officer to whom the Executive Committee has delegated any powers and duties with regard to this by-law.

“garden or park” means a garden or park to which the public has a right of access;

“goods” includes a living thing and any transferable interest;

“intersection” means an intersection as defined in Section 1 of the Road Traffic Act, 1989 (Act No 29 of 1989);

“litter” includes any receptacle, container or other object or matter which has been discarded, abandoned or left behind by a person trading or his or her customers;

“municipal area” means the area of jurisdiction of the Bela Bela Municipality;

“nuisance” shall bear the meaning given to it by the Ordinance;

“prohibited area” means any place in the municipal area which has been or may 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;

“property” in relation to a person carrying on the business of street trading, means any article, receptacle, vehicle or structure used or intended to be used in connection with such business, and includes goods in which he or she trades;

“public building” means a building occupied solely by the national or provincial government of the Council;

“public place” means a public place as defined in Section 2 of the Town Planning and Township Ordinance, 15 of 1986;

“public road” means a public road as defined in Section 1 of the Road Traffic Act, 1996 (Act No 93 of 1996), but excludes a public place;

“restricted area” means any place in the Municipal area which has been declared under Section 6A(2) of the Act by resolution of the Council to be an area in which street trading may be restricted;

“roadway” means a roadway as defined in Section 1 of the Road Traffic Act, 1996;

“sell” includes supply and also :

- barter, exchange or hire;
- store with a view to sell;
- store, expose, offer or prepare for sale;
- provide a service for reward.

“services” includes any advantage or gain for consideration or reward;

“sidewalk” means a sidewalk as defined in Section 1 of the Road Traffic Act, 1996;

“the Act” means the Businesses Act, 1991 (Act 71 of 1991) and includes the regulations made thereunder;

“trade” means sell goods or services in a public road or public place, and “trading” has a corresponding meaning;

“urban area” means any place in the municipality which is an urban area as defined in Section 1 of the Road Traffic Act, 1996;

“verge” means a verge as defined in Section 1 of the Road Traffic Act, 1996;

and any word or expression to which a meaning has been assigned in the Businesses Act, 1991, shall have that meaning.

2. Meaning of words and expressions in Business Act incorporated in this by-law

- (1) In this by-law, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Business Act, 1999 (Act No. 71 of 1999) shall bear a corresponding meaning given to it.

Single act constitutes street trading

- (2) For the purpose of this by-law a single act of offering for sale or of selling goods or services in or from a public road or public place constitutes the carrying out of the business of a street vendor, pedlar or hawker.

Reference to legislation includes regulations made hereunder

- (3) For the purposes of this by-law, a reference to a person carrying on the

business of street vendor, pedlar or hawker shall include any employee of such person.

CHAPTER 2

GENERAL SUPERVISION AND CONTROL

3. General Conduct

- (1) A person trading shall –
 - (a) not place his or her property on a verge or public place except for the purpose of commencing to trade;
 - (b) ensure that his or her property does not cover an area of a public road or public place which is greater in extent than three metres in length or two metres in width;
 - (c) not place or stack his or her property in such a manner that it constitutes a danger to any person or is likely to injure any person;
 - (d) not obstruct access to a fire hydrant;
 - (e) on concluding business for the day remove his or her property to a place which is not part of a public road or public place;
 - (f) not display his or her goods or other property on a building or other private property, without the consent of the owner, occupier or person in control of such building or property;
 - (g) not request by an employee or agent of the Council or any supplier of telecommunication or electricity or other services, move his or her property so as to permit the carrying out of any work in relation to a public road, public place or any such service;
 - (h) not attach any object by any means to any building, structure pavement, tree, parking meter, streetlight-pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture in or on a public road or public place;
 - (i) not make a fire at a place or in circumstances where it could harm any person or damage a building or vehicle or any street furniture referred to in paragraph (h);
 - (j) not store his or her property in a manhole or storm water drain;
 - (k) not contravene the terms and conditions of the lease or allocation to him/her of a stand or area contemplated in Section 6A(3)(b) and (c) of the Act.
 - (l) not sleep overnight at the place of such business or erect any structure (other than a device which operates in the same manner as, and is shaped like an umbrella) for the purpose of providing shelter;
 - (m) not carry on business in such a manner as to -
 - (i) create a nuisance

- (ii) damage/deface the surface or any public road or public place or any public or private property,
 - (iii) create a traffic hazard
- (n) At all times be in possession of a Street Trading Permit, issued by the Bela Bela Traffic Department for the purposes of Street Trading.

4. Cleanliness

- (1) A person trading shall -
 - (a) keep the area or site occupied by him or her for the purpose of such business in a clean and sanitary condition;
 - (b) keep his or her property in a clean and sanitary condition;
 - (c) properly dispose of litter generated by his or her business;
 - (d) not dispose of litter in a manhole, storm water drain or other place not intended for the disposal of litter;
 - (e) ensure that on completion of business for the day the area or site occupied by him or her for the purposes of trade is free of litter;
 - (f) in the case of a vendor of foodstuffs, take such precautions as may be necessary to prevent the spilling onto a public road or public place of any fat, oil or grease in the course of conducting his or her business and to prevent any smoke, fumes or odors emanating from his or her activities from becoming a nuisance. Any person preparing or selling perishable foodstuffs must comply with the Health Act No. 63 of 1977;
 - (g) on reasonable request by an employee or agent of the Council, move his or her property so as to permit the cleansing of the surface of the area or site where he or she is trading;
 - (h) carry on business in such a manner as not to be a danger or threat to public health or public safety.

5. Obstruction caused by traders

- (1) No person shall trade at a place where –
 - (a) it obstructs access to street furniture such as a bus passenger bench or shelter or queuing line, a refuse disposal bin, bicycle-stand or other facility intended for the use of the general public;
 - (b) it obstructs the visibility of a display window in business premises, if the person carrying on business in the business premises concerned objects thereto;
 - (c) it obstructs access to an entrance to or exit from a building or automatic bank teller machine, arcade and/or mall;
 - (d) it obstructs access to a pedestrian crossing, parking or loading bays and

other facilities for vehicle or pedestrian traffic;

- (e) it obstructs access to any vehicle;
- (f) it leaves less than one and a half metres in width of a sidewalk clear for pedestrian use;
- (g) it in any other manner substantially obstructs pedestrians in their use of a sidewalk.

6. No trading in stands or areas which have been let except by the lessee

If the Council has let or otherwise allocated any stand or area set apart or otherwise established for street trading purposes, as contemplated in Section 6A (3) (c) of the Act, no person may trade on such stand or in such area if he or she is not in possession of proof that he or she has hired such stand or area from the Council or that it has otherwise been allocated to him or her.

CHAPTER 3

TRADING NEAR CERTAIN RESIDENTIAL AND BUSINESS PREMISES

7. No trading near residential buildings in certain circumstances

- (1) Subject to the provisions of this by-law no person shall, inside an area specified in Schedule A, trade in that half of a public road contiguous to a building used for residential purposes if -
 - (a) the owner, person in control or any occupier of any part of the building facing onto such road has objected thereto in writing to the Council; and
 - (b) the fact that such objection was made, has been made known to the first-mentioned person by an authorized official.

8. No trading near certain business premises

No person shall trade on a verge contiguous to that part of a building in which business is being carried on by a person (other than a department store or supermarket or other supplier of many different lines of goods) who as one of his or her principal lines sells goods of the same nature as or of a similar nature to goods being sold by the first-mentioned person, without the consent of the second-mentioned person.

CHAPTER 4

RESTRICTIONS RELATING TO VEHICULAR TRAFFIC

9. Obstruction of vehicular traffic

- (1) No person shall trade at a place where -
 - (a) it causes an obstruction on a roadway;
 - (b) it limits access to parking or loading bays or other facilities for vehicular traffic;
 - (c) it obscures any road traffic sign or any marking, notice or sign displayed or made in terms of this by-law; or
 - (d) it interferes in any way with any vehicle that may be parked alongside such place.

- (e) it is on or alongside a public road inside an urban area, within 180 metres of a railway level crossing or any road traffic sign denoting a blind corner or rise thereon or within five metres from any intersection thereon, provided that this subsection does not prohibit the trade inside an urban area on a roadway within five metres from any intersection of the goods or services specified in Schedule B.
- (f) on or alongside any public road outside an urban area.

CHAPTER 5

GARDENS AND PARKS, AND VERGES NEXT TO CERTAIN BUILDINGS

10. No trading in certain gardens and parks, except where and as specified

- (1) No person may trade in a garden or park which is specified in -
 - (a) Part 1 of Schedule C, outside a stand or area set apart for trading purposes as contemplated in Section 6A (3) of the Act;
 - (b) Part 2 of Schedule C, outside the house so specified in relation to each such garden or park;
 - (c) Part 3 of Schedule C, other than in goods or services so specified in relation to each such garden or park;
 - (d) Part 4 of Schedule C, in any circumstances.

11. No trading on verges next to certain public buildings, places of worship and national monuments, except where and as specified

- (1) No person shall trade on a verge contiguous to any public building, place of worship or national monument which is specified in -
 - (a) Part 1 of Schedule D, outside a stand or area set apart for trading purposes as contemplated in Section 6A (3) of the Act;
 - (b) Part 2 of Schedule D, outside the hours so specified in relation to such verge;
 - (c) Part 3 of Schedule D, other than in goods or services so specified in relation to each verge;
 - (d) Part 4 of Schedule D, in any circumstances.

CHAPTER 6

RESTRICTED AREAS AND PROHIBITED AREAS

12. Restricted areas

- (1) No person shall trade in a restricted area which is specified in -

- (a) Part 1 of Schedule E, outside a stand or area set apart for trading purposes as contemplated in Section 6A(3) of the Act;
- (b) Part 2 of Schedule E, outside the hours so specified in relation to each such restricted area;
- (c) Part 3 of Schedule E, other than in goods or services so specified in relation to each such restricted area.

13. Prohibited areas

No person shall trade in any prohibited area.

CHAPTER 7

ENFORCEMENT AND PENAL PROVISIONS

14. Signs indicating restrictions and areas

- (1) The Council shall -
 - (a) by resolution prescribe signs, markings or other devices indicating -
 - (i) specified hours, places, goods or services in respect of which street trading is restricted;
 - (ii) the boundaries of a stand or area set apart for trading purposes under Section 6A (3)(b) of the Act;
 - (iii) the fact that any such stand or area has been let or otherwise allocated;
 - (iv) the location or boundaries of places where street trading is prohibited; and
 - (b) display any such sign, marking or device in such a position and manner as will indicate the restriction, prohibition, location or boundary concerned.

15. Removal and impoundment

- (1) An officer may remove and impound any goods, article, receptacle, vehicle or structure -
 - (a) which he or she reasonably suspects is being used or intended to be used or has been used in or in connection with street trading in contravention of this by-law; and
 - (b) which he or she finds at a place where street trading is restricted or prohibited in terms of Section 3(d) and Sections 5 to 14 inclusive and which, in his or her opinion, constitutes an infringement of any such Section.
- (2) The disposal of any goods, article, receptacle, vehicle or structure removed and impounded as contemplated in Subsection (1), and the liability of any person for the expenses incurred in connection with such removal, impoundment and disposal, shall be in accordance with the regulations prescribed by the Minister under Section 6(1) (b) of the Act.

16. Offences

- (1) Any person who -
 - (a) contravenes any provision contained in Chapter 2 , 3 or 4 of this by-law; or
 - (b) fails to comply with any direction conveyed by a sign, marking or device –
 - (i) which indicates a restriction or prohibition in terms of any provision contained in Chapter 5 or 6 of these by-law; and
 - (ii) which has been displayed in the manner prescribed in Section 15(b), shall be guilty of an offence.

17. Presumptions

- (1) In any prosecution for an offence under these by-law, an allegation in the charge concerning -
 - (a) any goods with which a business was carried on were or were not of a particular kind, class, type or description;
 - (b) any goods or services were sold;
 - (c) any place was situate in a public road or public place or within a particular area;
 - (d) any person carried on the business of street trading and in a manner and place alleged;
 - (e) any sign, marking or device which indicates a restriction or prohibition contained in any relevant provision contained in Chapter 5 or 6 of this by-law was displayed in the manner prescribed in Section 15(b),

shall be presumed to be correct unless the contrary is proved.

18. Penalties

Any person who is guilty of an offence in terms of this by-law shall on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.

19. Vicarious responsibility of persons carrying on business

- (1) When an employee of a person conducting the business of street trading does or omits to do any act which would be an offence in terms of this by-law for that person to do or omit to do, that person shall be deemed himself or herself to have done or omitted to do the act, unless he or she satisfies the court that -
 - (a) he or she neither connived at nor permitted the act or omission by the employee concerned;
 - (b) he or she 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 circumstance fell 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 he or she took all reasonable steps to prevent the act or omission.

20. Vicarious 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 therefore as if he or she were the person carrying on the business concerned.

21. Repeal of By-law

- (1) The Street Trading by-law of the town of Bela-Bela, published under, as amended, is hereby repealed: Provided that such repeal shall not affect the continued validity of charges determined by the Council under those by-law.
- (2) Any reference:-
 - (a) in this by-law to a charge determined by the Council shall include a charge determined by the Council under the by-law repealed by subsection (1), until the Council's determination of charges under these by-law comes into operation; and
 - (b) in determination of charges made under the by-law so repealed, to a provision in those by-laws shall be deemed to be a reference to the corresponding provision in this by-law.
- (3) Anything done under the provisions of the by-laws repealed by subsection (1), shall be deemed to have been done under the corresponding provision of these by-laws and such repeal shall not affect the validity of any approval, authority, waiver or other act which at the commencement of this by-law is valid under the by-law so repealed.

