

BELA BELA LOCAL MUNICIPALITY
INFORMAL TRADING POLICY AND MANAGEMENT FRAMEWORK

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CHAPTER 1 – DEFINITIONS AND APPLICATION

1. PREAMBLE

1.1 The Constitution of the Republic of South Africa, 1996 provides that municipal government is responsible for "trading regulations" and "street trading" within its area of jurisdiction, and a municipal government objective is to promote social and economic development.

1.2 The municipality recognises that informal trading is as much a part of the past, present and future of it as are other forms of economic activity. It contributes towards job creation and thereby helps in the absorption of many who would otherwise be economically idle. As a result the Municipality recognizes the key role that informal trading plays in poverty alleviation, income generation and entrepreneurial development and, in particular, the positive impact that informal trading has on historically disadvantaged individuals and communities.

1.3 The Municipality acknowledges the need to adopt a developmental approach to the informal trading sector in order to create an environment that is conducive to the growth of businesses in the informal trading sector.

1.4 The municipality acknowledges that there are many challenges which face this sector. These include, inter alia, limited infrastructure and storage, law enforcement difficulties, health and safety obligations, diversification and consumer behavior. It is in an attempt to assist this sector and alleviate some of the challenges impeding the further development of this second economy that this policy is being adopted.

1.5 The Municipality further acknowledges the need for a balanced relationship between the informal and formal trading sectors in order to promote social and economic development.

1.6 This policy, accordingly aims to:-

- 1.6.1 To clarify the municipality's position on and approach to informal trading to all relevant and interested stakeholders;
- 1.6.2 To form the basis for the review and revision of any by-laws that regulate informal trading falling within the jurisdictional areas of the municipality
- 1.6.3 Consolidate into a single set of bylaws, the bylaws passed by the predecessors in law of the Bela Bela Local Municipality; and
- 1.6.4 Govern informal trading within its area of jurisdiction.

1.7 The Municipality will conduct a public participation process before adopting this policy.

1.8 The municipality shall establish a system for identifying and demarcating trading sites. The municipality will be responsible for identifying and allocating trading areas / sites for container traders to ensure that all trading sites meet the policy requirements. Container trading is permitted only in the municipality identified areas in accordance with the container policy.

2. LEGISLATIVE AND POLICY BACKGROUND

The following are the key legislative imperatives that provide a mandate to the Bela Bela Local Municipality to support the informal trading sector.

ACT	APPLICABILITY	WHAT IT DOES IN RESPECT OF INFORMAL TRADING
Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)	All organs of state	<p>Section 22 of the Constitution of the Republic of South Africa (the Constitution) provides for the freedom of trade, occupation and profession. It provides that “every citizen has the right to choose their trade, occupation or profession freely.” It is accepted that this freedom extends to informal trading. Section 22 of the Constitution further provides that “[t]he practice of a trade, occupation or profession may be regulated by law.”</p> <p>Section 36(1) of the Constitution also provides that rights contained in the Bill of Rights may be limited “...in terms of a law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors. The effect of this Limitation Clause on the right to choose a trade is simply an acknowledgment that the right to trade is not a right that cannot be limited and must be considered and interpreted taking into account other competing rights and obligations.</p>
The Businesses Act 71 of 1991 (as amended by Act No 186 of 1993)		Prohibits the conduct of any business without the possession of a requisite licence. Makes specific provision for the licensing of businesses
The Public Health by- Laws		Which outlines the permit requirements for the rendering of specific services
The Promotion of Equality and the Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)	The state and all persons (natural or juristic person)	Prohibits the state or any person from discriminating unfairly against any person on the grounds of race or gender through the denial of access to opportunities for rendering services or by failing to take steps to reasonably accommodate the needs of such persons.
Promotion of Administrative Justice Act	The state and all persons (natural or juristic person)	Establishes the standards which ensure just, fair administrative action.

Regulation 918 promulgated under The Health Act 63 of 1977	The state and all persons (natural or juristic person)	Establishes the manner for the application and issue of Certificates of Acceptability.
The Atmospheric Pollution Prevention Act 45 of 1965		Establishes the framework for the prevention of pollution in the atmosphere and provides for matters incidental thereto.
The National Building Regulations and Building Standards Act 103 of 1977,		Provides for standards for the regulation and enforcement of issues connected therewith.
Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003)	Municipalities and municipal entities	Establishes a regulatory framework for supply chain management which includes procurement within municipalities and municipal entities.
Local Government Municipal Systems Act, 2000 (Act No 32 of 2000)	Local sphere of government	Establishes a framework for the establishment of service delivery agreements involving competitive bidding processes
Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).	Procurement provisions apply to all organs of state.	Establishes a code of good practice to inform the: <ul style="list-style-type: none"> • development of qualification criteria for the issuing of licenses or concessions, the sale of state owned enterprises and for entering into partnerships with the private sector; and • development and implementation of a preferential procurement policy.
Prevention and Combating of Corrupt Activities Act, 2004. (Act No. 12 of 2004).	Public and private Sector	Makes corruption and related activities an offence. Establishment a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; and Places a duty on certain persons holding a position of authority to report certain corrupt transactions.
The Conventional Penalties Act (Act 15 of 1962)	The state and all persons (natural or juristic person)	Provides for the enforceability of penalty stipulations, including stipulations based on pre-estimates of damage.

Arbitration Act (Act 42 of 1965)	The state and all persons (natural or juristic person)	Provides for the settlement of disputes by arbitration tribunals in terms of written arbitration agreements and for the reinforcement of the awards of such tribunals
State Information Technology Agency Act (Act 88 of 1998)		Empowers the State Information Technology Agency to act as a procurement agency in respect of information technology requirements in accordance with state procurement policy regarding the provision of data processing services; training; application software development and maintenance services; technical, functional and business advice and support; and related management services.
The Businesses Act 71 of 1991		Makes specific provision for the licensing of businesses
Promotion of Access to Information Act (Act 2 of 2000)		Gives effect to the rights provided for in the Bill of Rights in Section 32 of the Constitution (Act 108 of 1996), namely that everyone has the right of access to information held by the state and any information that is held by another person that is required for the exercise or protection of any rights. Sets out the procedures pertaining to the obtaining of records in both the public and private sector, the grounds for refusal of access to information, mandatory disclosures in the public interest, and appeals against decisions of information officers of certain public bodies.

3. INTERPRETATION

3.1 In this policy, the English text prevails in the event of any conflict with other texts and, unless the context indicates otherwise –

- 3.1.1 "black person" is a generic term which means Africans, Coloureds and Indians;
- 3.1.2 "Constitution" means the Constitution of the Republic of South Africa, 1996;
- 3.1.3 "Council" or "the Council" means the Council of the Bela Bela Local Municipality;
- 3.1.4 "historically disadvantaged individual" means a South African citizen who–
 - 3.1.4.1. is a black person; and/or
 - 3.1.4.2. is a woman; and/or
 - 3.1.4.3. has a disability;
- 3.1.5 "impoundment costs" means all costs incurred by the Municipality in impounding and storing property impounded, and, where applicable, the costs incurred as a result of the disposal of the impounded property;
- 3.1.6 "informal trader" means a person, or an enterprise which is not registered or incorporated in terms of the corporate laws of South Africa, and who or which engages in informal trading whether such person is registered as a informal trader under section 9 of this policy or not;
- 3.1.7 "informal trading" also referred to as the "Second Economy" means trading in goods and/or services by individuals and/or groups, in locations designated for informal trading and which requires little more than the actual goods and/or services to commence and which typically constitutes the types of trading described in section 3.1, provided that such trading takes place on at least five(5) days in any calendar month; This expressly excludes criminal and illegal activity in terms of the laws of the country and trading in private residences in the form of, among others, spaza shops, shebeens and taverns, is not subject to this policy as these kinds of economic activity are already subject to regulation under other policies and procedures within the municipality;
- 3.1.8 Container Traders- Informal traders who conduct their trade in structures including caravans, containers, marquees, trailers and Wendy Houses;
- 3.1.9 "trading plan area" means an area for which a designated trading plan area has been adopted in terms of this policy for the purposes of informal trading after having followed the process for designation in terms of the Businesses Act 71 of 1991;
- 3.1.10 "market" means a demarcated area within a trading plan area which is designated as such in a trading plan and which is managed in a coordinated manner and be also distinguished by attractive roofing which becomes the centerpiece that adds to the surrounding aesthetics and urban management design. ;
- 3.1.11 "Municipality" means the Bela Bela Local Municipality;

3.1.12 "Municipal area" means the area of jurisdiction of the Municipality determined in terms of section 21 of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);

3.1.13 "non-Municipal property" means property that is situated in Municipal area but which is not owned, leased by, or under the management control of the Municipality;

3.1.14 "nuisance" includes but is not limited to, 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 property of other, or which materially interferes with their ordinary comfort, convenience, peace or quiet of the public, or which adversely affects the public at large.

3.1.15. "officer" means –

3.1.15.1. a traffic officer appointed in terms of section 3 of the Road Traffic Act 1989 (Act No.29 of 1989);

3.1.15.2. a member of the South African Police Service; or

3.1.15.3. a peace officer contemplated in section 334 of the Criminal Procedure Act 1977 (Act No. 51 of 1977);

3.1.16. "prescribe" means prescribe by regulation;

3.1.17. "public road" means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof, or to which the public or any section thereof has a right of access and includes:

3.1.17.1. any road reserve,

3.1.17.2. the verge of any such road, street or thoroughfare;

3.1.17.3. any bridge, ferry or drift traversed by any such road, street or thoroughfare; and

3.1.17.4. any other work or object forming part of, or connected with, or belonging to such road, street or thoroughfare;

3.1.18. "public place" means any square, park, recreation ground, garden,

commonage or enclosed or open space in the area of the municipality which:

3.1.18.1. is vested by deed of title in the municipality for the use and the benefit of the public or which being in the ownership of the municipality is by resolution of the municipality specifically established as or declared to be a public place; or

3.1.18.2. the public has the right to use whether by payment of an admission fee or nor irrespective of whether the property is privately owned or not; or

3.1.18.3. is shown on a general plan or diagram of any private township filed in the Deeds Registry or in the Surveyor General's Office and to which the owners of erven or lots in such township have a common right;

- 3.1.19. "registration" means a registration as an informal trader in terms of section 8 of this policy;
- 3.1.20. "registered trader" means an informal trader who is registered as an informal trader by the Municipality under section 8 of this policy;
- 3.1.21. "Registrar" means the Registrar of Informal Traders appointed by the Municipality in terms of section 8,
- 3.1.22. "special events" may include, but are not limited to, sports events, night markets, flea markets, bazaars, traditional events, cultural events, music festivals, promotional events and religious vents;
- 3.1.23. "street trading" means the selling of any goods (including a living thing) or the supplying or offering to supply any service for reward, as an informal trader, street vendor, peddler or hawker in a public place or a public road but does not include the sale of newspapers only.
- 3.1.24. "Systems Act" means the Local Government: Municipal Systems Act 2000 (Act No. 32 of 2000);
- 3.1.25. "trading plan" means a trading plan adopted by the Municipality to govern informal trading within a informal trading plan area;

4. TYPES OF INFORMAL TRADING

4.1. The different types of informal trading that take place in the municipality are covered by the policy, namely:

- 4.1.1 street/kerbside trading;
- 4.1.2 trading in pedestrian malls;
- 4.1.3 trading at markets(flea&craft markets as well as special markets);
- 4.1.4 trading at transport interchanges or public road intersections;
- 4.1.5 trading in a public place;
- 4.1.6 mobile trading, such as from a bicycle, a caravan, or any other vehicle;
- 4.1.7 roving traders;
- 4.1.8 Intersection Trading ;and
- 4.1.9 trading at special events. (includes Night Markets and major events)

5. RIGHT TO ENGAGE IN INFORMAL TRADING

5.1 Subject to the provisions of this policy, any regulations made in terms of section 25, and any other applicable law, informal trading is permitted in any part of the Municipal area, subject to the general prohibitions and restrictions outlined in sections 13 and 14 of this policy.

CHAPTER 2 – TRADING PLAN AREAS AND TRADING PLANS

6. ADOPTION OF TRADING PLANS

6.1. The Municipality shall ensure that all informal trading spaces are formalized through demarcation as envisaged in the Businesses Act 71 of 1991 to ensure that the entire jurisdictional area of the municipality has been considered for demarcation.

6.2. This policy recognizes that various Departments within the municipality share the responsibility of infrastructure development within the jurisdictional area of the municipality, be that responsibility direct or indirect. Consequently the Municipality in consultation with all relevant Departments, shall draw up a plan to ensure that what is envisaged in Clause 1.1 above is effected forthwith.

6.3. Designation of trading areas shall consider specific areas e.g. Economic Nodes of the town/Central Business Districts, adjacent to Public transport facilities, Public open spaces, areas with High levels of pedestrian traffic; The proximity of informal trading to formal trading; High levels of vehicular traffic.

6.4. The municipality shall categorize and define the different types of informal trading markets and priorities for infrastructure development in relation to informal trading markets. The Municipality may, by regulation made in terms of section 25, adopt trading plans, particularly in areas where there is or is likely to be significant informal trading.

6.5. A trading plan may allow and regulate informal trading on non-Municipal property, subject to the rights and the written consent of the owner of such property.

6.6. Such consent and any conditions agreed upon between such owner and the Municipality governing the inclusion of such non-Municipal land in a trading plan, must be recorded in a written agreement between such owner and the Municipality.

6.7. A trading plan must:

6.7.1. define the geographic boundary of a trading plan area to which the trading plan shall apply;

6.7.2. demarcate informal trading bays and markets where informal trading is permitted within such trading plan area,

6.7.3. define the tenure rights or conditions of allocation which will apply to a registered trader who is allocated a trading bay or permitted to trade in any market,

6.7.4. describe the criteria to be applied to the allocation of trading bays and access to, and occupation of markets,

6.7.5. set out any tariff applicable and payable in respect of the occupation of any trading bay or market,

6.7.6. make provision for the management and administration of the trading plan area, and

6.7.7. be compatible with, and be included in, the provisions of any town planning scheme or spatial development framework adopted by the Municipality under any law.

6.8. A trading plan may include any other matters governing informal trading in the relevant trading plan area, including, without limitation:

6.8.1. the manner in which social and economic development will be promoted through the trading plan;

6.8.2. matters relating the legal arrangements between the Municipality and any third party in respect of the obligations relating to the general management of the market in terms of which the third party is responsible for at least the following:

6.8.2.1. the management of the operations of the market;

6.8.2.2. the management of informal traders operating within the market;

6.8.2.3. ensuring that all relevant persons participate in appropriate decisions;

6.8.2.4. providing guidance to the informal traders operating within the market with business support and development services; and

6.8.2.5. any service which is in addition to the services provided by the Municipality.

6.9. A trading plan must comply with sections 13, 14 and 15 of this policy and with any other applicable law.

6.10. Any person shall be entitled to request the Municipality to consider the adoption of a trading plan and the Municipality must duly consider such a request, within a reasonable period of time after receipt by the Municipality of such a request;

6.11. When considering a request for the adoption of a trading plan, the Municipality must have due regard for any existing and proposed trading plans in the vicinity of the proposed trading plan area in order to determine the desirability of the adoption of a trading plan.

6.12. Informal trading shall only be allowed on the restricted bays in areas that shall be designated for that purpose as envisaged in clause 8.1, subject to being in possession of a valid Smart Card as stipulated in clause 9 or lease issued by municipality

7. PUBLIC PARTICIPATION IN RESPECT OF THE ADOPTION OF A TRADING PLAN

7.1. Before adopting a trading plan, the Municipality is obliged to:

7.1.1. consult with interested and affected persons, including participants in the informal and formal business sectors and owners and occupiers of land in the vicinity of the trading plan area to be subject to the proposed trading plan;

7.1.2. compile a draft trading plan following the consultation process in terms of section 7.1.1.;

7.1.3. give notice to all interested and affected persons by:

7.1.3.1. publication of a notice in a local newspaper regularly circulating in the Municipal area, such notice to be in both English, Afrikaans, seSotho and Setswana,

7.1.3.2. erecting such number of notices, in the English, Afrikaans, seSotho and Setswana languages, at or near the intended location of the trading plan area designated in such trading plan,

7.1.3.3. publicly broadcasting the contents of such notices by loudhailer or loudspeaker at or near the intended location of the trading plan area designated in such trading plan, and

7.1.3.4. by causing the information contained in such notices to be broadcast by a local radio-stations that broadcast in English, Afrikaans, seSotho and seSetswana languages in the Municipal area.

7.2. In the notices referred to in section 7.1.3.1. to 7.1.3.4., the Municipality must provide sufficient information to enable interested and affected persons to identify the location of the intended trading plan area designated in the intended trading plan and the purpose of the trading plan, and invite such persons:

7.2.1. to lodge objections or comments to the demarcation of a trading plan within a period specified in such notice, which period shall not be less than 60 (sixty) days. and

7.2.2. invite interested and affected parties to a public meeting.

7.3. The public meeting referred to in clause 6.2.1 must be held –

7.3.1. in the vicinity of the proposed trading plan area; and

7.3.2. after seven (7) days but not later than sixty (60) days from the date of publication of the notice.

7.4. At the public meeting, the Municipality must –

7.4.1. be represented by a person duly authorized by the Municipality who must make a presentation to the public present at the meeting in which the draft trading plan is explained;

7.4.2. reasonably respond to any queries related to the draft trading plan which may be posed by the public at the public meeting; and

7.4.3. give interested and affected parties an opportunity to make comments and objections at the public meeting, which comments and objections must be recorded.

7.5. The Municipality must consider all objections or comments that the Municipality may receive pursuant to the process outlined in this section.

7.6. After having considered the comments and objections, the Municipality must, within a reasonable period of time after the commencement of the public participation process in respect of the relevant draft trading plan, notwithstanding the provisions of any other law, including, but not limited to laws pertaining to municipal planning, and at a meeting of the Council–

7.6.1. adopt the draft trading plan;

7.6.2. amend and adopt the draft trading plan; or

7.6.3. reject the draft trading plan.

7.7. Notwithstanding the provisions of section 59 of the Systems Act, the Council may not delegate the decision-making powers referred to in section 6.6, above.

7.8. Public Notice of the adoption of a trading plan by the Municipality in terms of sections 7.6.1 or 7.6.2 shall, in addition to publication in the Provincial Gazette as required by section 25.1, be given by publication of a notice of such adoption publication of a notice in a local newspaper regularly circulating in the Municipal area, such notice to be in both English, Afrikaans, seSotho and Setswana, and by erecting such number of permanent notices as are reasonably necessary, in the English, Afrikaans, seSotho and Setswana languages, at or near the intended location of the trading area, which informs the public:

7.8.1. that the draft trading plan has been adopted as a trading plan, with or without amendment;

7.8.2. of the key aspects of the trading plan; and

7.8.3. that the trading plan is available for inspection at a specified location within the Municipal area.

8. AMENDMENT, REVOCATION AND REVIEW OF TRADING PLANS

8.1. The Municipality –

8.1.1. may by regulation amend an adopted trading plan, provided that if the amendment deviates materially from the trading plan, then the Municipality must comply with section 6 with the necessary changes; and

8.1.2. must review trading plans from time to time as the Municipality deems fit.

CHAPTER 3 – MANAGEMENT OF INFORMAL TRADING

9. REGISTRATION OF INFORMAL TRADERS

9.1. The Municipality must:

9.1.1. designate an official in the office of the head of the department of the Municipality responsible for local economic development and in the full time employ of the Municipality as its Registrar of Informal Traders,

9.1.2. establish an Informal Trader Registration Committee comprising of the head of the departments of the Municipality responsible for local economic development, policing, planning and operations or their nominees.

9.2. The head of the department of the Municipality responsible for local economic development or designate shall be the chairperson of the Informal Trader Registration Committee and such head shall be primarily responsible for the administration of this policy.

9.3. The Registrar must:

9.3.1. establish and maintain an annual Register of Informal Traders;

9.3.2. administer the registration process comprising at least:

9.3.2.1. the receipt of applications for registration,

9.3.2.2. the investigation of the feasibility of the application and the compilation of a report thereon,

9.3.2.3. the submission of the application and the feasibility report to the Informal Trader Registration Committee,

9.3.2.4. the issue of a Registration Card.

9.4. The Informal Trader Registration Committee, having received an application and a feasibility report from the Registrar, must review and consider each application for registration and, if satisfied that the requirements of this policy have been met, instruct the Registrar to register the applicant as a registered trader on an annual basis.

9.5. The Register of Informal Traders must at a minimum contain:

9.5.1. the full name and surname of the informal trader

9.5.2 the identity number of the informal trader concerned,

9.5.3. the physical and postal address of the informal trader concerned,

9.5.4. the location where the informal trader concerned is authorized by such registration to carry on business as an informal trader, and if such registration

applies to a trading plan area, the trading bay or market allocated to such informal trader in accordance with the applicable trading plan,

9.5.5. a description of the goods and / or services that the informal trader concerned may be authorized by such registration to sell or provide,

9.5.6. a distinguishing registration number, and

9.5.7. any other information that may be required by this policy or be prescribed by regulation.

9.6. A registered trader must be issued with a card, made of durable material, being not bigger than 5 centimetres by 9 centimetres, on which must be printed the name and identity number of the registered trader, the distinguishing registration number allocated to such registered trader and a summary of the information required to be entered in the Register of Informal Traders in terms of section 8.5.

9.7. The production of the card referred to in section 8.6 shall be prima facie proof of the registration of the registered trader and of the information contained thereon.

9.8. A registration card referred to in clause 8.6 remains the property of the Municipality at all times and is issued personally and on an annual basis to the registered trader, who may not permit or authorize any other person to conduct any informal or other trading save to the extent permitted by this policy.

9.9. Any person who intends carrying on business as an informal trader must annually register as an informal trader with the Municipality in terms of this policy.

9.10. Whenever it comes to the notice of the Municipality that an informal trader is carrying on any informal trading in any part of the Municipal area, an official of the Municipality appointed for that purpose must give a written notice and a verbal instruction, in one of the official languages of the Republic of South Africa that such person understands, to such informal trader requiring such informal trader to make application for registration in terms of section 8.9, and such notice and instructions must provide such person with such additional information that will enable him or her to understand the procedure to register and the consequences thereof as contained in this policy.

9.11. Any informal trader on whom a notice and instruction is served in terms of section 8.10 shall within sixty (60) days of the notice and instructions being served on him or her:

9.11.1. apply for registration as an informal trader in terms of section 8.9 of this policy, failing which he or she shall be deemed to be trading in contravention of this policy unless he or she ceases such informal trading forthwith, or

9.11.2. submit proof to the Municipality that he or she is not an informal trader.

9.12. The Municipality must, within six (6) months of the commencement of this policy give notice to all persons engaged in informal trading in the Municipal area of the adoption of this policy and the obligation to register in terms of section 8.9, by:

9.12.1. publication of a notice in a local newspaper regularly circulating in the Municipal area, such notice to be in English, Afrikaans, seSotho and Setswana,

9.12.2. erecting such number of notices, in the English, Afrikaans, seSotho and Setswana languages, containing the information at or near all locations in the Municipal area where informal trading is or is likely to take place, and

9.12.3. publicly broadcasting the contents of such notices by loudhailer or loudspeaker in places where informal trading is or is likely to take place,

9.12.4. by causing the information contained in such notices to be broadcast on radio on local radio-stations that broadcast in the English, Afrikaans, seSotho and Setswana languages in the Municipal area.

9.13. Compliance with the provision of section 9.12 shall be deemed to constitute the notice and instruction required to be given to an informal trader in terms of section 8.10 in the case of all informal traders carrying on informal trading at the commencement of this policy, provided that in any proceedings in any court, an informal trader may prove to the satisfaction of the court that, despite such compliance with the provisions of clause 9.12, he or she was not aware of the need to register as an informal trader.

9.14. The Municipality is entitled to charge a registered trader:

9.14.1. a periodic trading fee; and

9.14.2. an additional fee or tariff, which is to be determined by the Municipality in its sole discretion, in respect of additional costs or services where the registered trader trades within an informal trading area.

9.15. In order to qualify for registration, the applicant:

9.15.1. must have experience as a trader, in particular where there is a history of trading in a specific geographical area;

9.15.2. may not already be registered as a registered trader;

9.15.3. must be a South African citizen, unless such person is authorized to carry on business as an informal trader in terms of the Immigration Act, 2002 (Act No 13 of 2002);

9.15.4. must not employ and actively utilize the services of more than five (5) persons;

9.15.5. must re-apply on an annual basis.

9.16. The Municipality must take into account the following factors when considering an application for registration:

9.16.1. the applicant's ability to meet the trading hours (if any) for the relevant trading plan area as the Municipality may determine;

9.16.2. Preference will be given to Historically Disadvantaged Individuals defined as those who, although of legal age to vote, did not have the right to vote before 1994 in the South African elections.

9.16.3. where there are a limited number of trading bays available in the trading plan area in respect of which a registration is sought, the need to give preference to applicants who have not previously engaged in informal trading within the Municipal area;

9.16.4. the nature of the trading goods which the applicant intends selling, or the services which the applicant intends rendering, bearing in mind the nature of the businesses within that trading plan area or in its immediate vicinity;

9.16.5. the need to give preference to unemployed applicants;

9.16.6. the need to give preference to applicants who do not share a household with an existing registered trader, unless the number of available trading bays for

the relevant trading plan area is greater than the number of applicants seeking registrations for those trading bays;

9.16.7. whether the applicant has, in terms of this policy, been convicted of an offence and/or had a registration revoked.

9.17. The Municipality may, by regulation, impose such terms and conditions in respect of any registration as it deems fit, including but not limited to, the right to:-

9.17.1. specify :-

9.17.1.1. the trading hours during which the registered trader may trade;

9.17.1.2. the nature of the goods or services the registered trader is registered to trade; and

9.17.1.3. the registered trader's trading bay number;

9.17.2. allocate the informal trader an alternative bay in the same trading plan area;

9.17.3. specify the type of structure(s), if any, which may be erected on a trading bay and/or in a trading plan area;

9.17.4. impound trading goods in terms of section 19.5.3 in the event of a contravention of any provision of this policy or any other law;

9.17.5. suspend a registration for a special event on prior notice to the informal trader, with no compensation payable to the informal trader, notwithstanding that informal trading may be authorized by the Municipality at the special event in terms of section 16;

9.18. Notwithstanding the contents of any relevant trading plan, the Municipality has the right, upon prior notice to the informal trader and with no compensation payable by the Municipality to the registration holder, temporarily to:

9.18.1. relocate a registered trader,

9.18.2. suspend the validity of any registration, or

9.18.3. prohibit a registered trader from trading at the relevant trading bay,

9.18.4. should it be necessary to do so if circumstances arise which renders the continuation of trading from the relevant trading bay impractical, unsafe or for good and sufficient reason severely inconvenient, which circumstances shall include, but not be limited to, the maintenance or construction of infrastructure or buildings required to be undertaken by the Municipality, property developments, alterations or refurbishments by any entity, or activities by public entities conducted in terms of their powers and functions.

9.19. The registration of a registered trader may be cancelled by the Registrar if:

9.19.1. the registered trader voluntarily and in writing consents to such cancellation,

9.19.2. subject to the provisions of section 10, upon the death of the registered trader,

9.19.3. in the event of a transfer of registration in terms of section 10 being refused and the registered trader concerned fails to carry on the informal trading for which such registration was granted within a reasonable period after such refusal, provided that the Municipality shall have first given such registered

trader not less than 14 (fourteen) days written notice of the intention to cancel the registration of such registered trader in terms of this sub-section, or

9.19.4. the provisions of sections 11.8 or 19.10 are invoked by the Municipality.

9.20 Businesses in respect of which any other license, certificate or permit is required, other than an informal trading license, is required are to comply with the necessary provisions in addition to this registration process. This refers in particular to businesses that engage in the:

9.20.1. Sale or supply of meals or perishable foodstuffs;

9.20.2. Provision of certain types of health facilities or entertainment;

9.20.3. Sale or supply of repacked sweets, crisps, chocolates, biscuits and other prepared foodstuffs.

9.20.4. Provision of informal hairdressing services, cosmetology or beauty services, body piercing and tattooing services.

9.21. Periodic markets are markets which locate alongside stadiums and public event areas and occur specifically at public events, such as music concerts, festivals and fairs, religious celebrations and cultural holidays.

9.21.1. What is commonly referred to as flea markets, bargain markets, craft markets artifacts and curio markets, tourist markets, and which are not permanent in nature, are included in the definition of periodic markets.

9.21.2 Periodic markets are not permanent markets, either because the market is linked to events which occur periodically, or the space in which the market is held is occupied by other uses when the market is not open, or the purpose of the market is specifically to highlight and promote specific goods or cultures.

9.21.3 It is the responsibility of all periodic market organizers or operators, falling within the definition and scope of this policy, to seek permission to operate such a market from the municipality if it is intended that the market will operate in public spaces.

9.21.4 The Municipality will develop processes and procedures for the granting of limited period permissions for the operators of periodic markets within markets that are assigned thereto.

9.22. Any action taken by the Municipality in terms of this section 9 must comply with the provisions of the Promotion of Administrative Justice, 2000 (Act No 3 of 2000).

10. TRANSFER OF REGISTRATION

10.1. For the purposes of this section 10, “dependant” means, in addition to its ordinary meaning, a spouse of the registered trader, a civil union partner of the registered trader in a civil union as defined in the Civil Union Act, 2006 (Act No. 17 of 2006), a person married to the registered trader in accordance with the indigenous law ordinarily adhered to by the registered trader and a partner of the registered trader who lives or who has lived with the registered trader in a relationship having the outward attributes of a marriage.

10.2. The registration of a registered trader may be permanently transferred, with the written approval of the Municipality, to a dependant of the registered trader, or an assistant acting on behalf of such dependant, who will continue trading as a registered trader until the registration is cancelled for any valid reason, in the event of

- 10.2.1. Death of Principal Trader – where the inability to trade would place undue hardship on the family of the Principal Trader, permission may be granted to another family member/assistant trader to continue trading until the end of the trading period as stipulated on the permit; and
- 10.2.2. if the loss of income generated by the informal trading would place such dependant under undue or severe economic hardship.
- 10.3. A registration may be temporarily transferred, with the written approval of the Municipality, to a dependant of a registered trader, if the registered trader –
 - 10.3.1. is incapable of informal trading because of an illness, provided that:-
 - 10.3.1.1. proof from a medical practitioner is provided to the Municipality which certifies that the registered trader is unable to trade; and
 - 10.3.1.2. the dependant or assistant is only permitted to replace the registered trader for the period stipulated by the medical practitioner in the certificate for which the registered trader will be incapable of trading;
 - 10.3.2. is unable to carry on informal trading for an extended period due to an obligation to fulfill religious, traditional or cultural duties, provided that where the validity of the registration extends beyond 1 (one) month, then the registered trader must resume trading within 1 (one) month, unless the Municipality consents to a longer period in exceptional circumstances.
- 10.4. Subject to sections 10.2 and 10.3, a registered trader may not transfer his or her registration to any other person in any manner, including but not limited to, by way of lease or sale.
- 10.5. The transfer of any registration in terms of sections 10.2 or 10.3 shall be notified to the Registrar who shall record such transfer in the Register of Informal Traders and no transfer shall be valid until so recorded.

11. TRADING IN FOODSTUFFS

- 11.1. For the purposes of this section 11:
 - 11.1.1. “foodstuff” means any article or substance ordinarily eaten or drunk by humans or purporting to be suitable, or manufactured or sold, for human consumption, and includes any part or ingredient of any such article or substance, or any substance used or intended or destined to be used as a part or ingredient of any such article or substance;
 - 11.1.2. “designated business” shall mean the sale or supply to consumers by an informal trader of:
 - 11.1.2.1. any foodstuff in the form of meals for consumption on or off the designated location where the informal trader ordinarily conducts business; or
 - 11.1.2.2. any perishable foodstuff, including such sale or supply:
 - 11.1.2.3. which is conveyed from place to place, whether by vehicle or otherwise;
 - 11.1.2.4. on a public road or at any other place accessible to the public; or
 - 11.1.2.5. in, on or from a movable structure or stationary vehicle,

- 11.1.3. “designated location” means the place at which an informal trader carries on a designated business,
- 11.1.4. “designated conveyance” means the mode of transport used by an informal trader and from which he carries on a designated business,
- 11.1.5. “perishable foodstuff” shall mean any foodstuff or category of foodstuffs declared by the Municipal Manager of the Municipality, with the concurrence of the Council, by regulation to be a perishable foodstuff,
- 11.2. No person shall, with effect from a date six months after the commencement of this policy carry on any designated business in the Municipal area:
- 11.2.1. unless such person is a registered trader,
- 11.2.2. contrary to a condition imposed as a consequence of registration,
- 11.2.3. unless the designated location or the designated conveyance is approved by the Municipality for the purposes of a designated business.
- 11.3. The Registrar shall not register an informal trader to carry on a designated business unless:
- 11.3.1. the designated location or the designated conveyance complies with the relevant Municipal town planning provisions and with any law or regulation providing for the safety or health of the public,
- 11.3.2. any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, including perishable foodstuffs, complies with a requirement of any law or regulation relating to the safety and health of the public;
- 11.3.3. the applicant for registration, whether or not he is or will be in actual and effective control of the designated business; or if another person is or will be so in control, that other person, is a suitable person to carry on the business, whether by reason of his character or otherwise, having regard to any conviction recorded against him, his previous conduct or for any other reason;
- 11.4. For the purposes of section 11.3, the Registrar may request the South African Police Services for a report stating particulars of all convictions (if any) recorded against an applicant concerned or against any person referred to in subsection 11.3.3.
- 11.5. For the purposes of such a report any member of the South African Police Services may require the applicant or person concerned to furnish such information and particulars (including any finger-print, palm-print or foot-print) as that member may consider necessary.
- 11.6. The Registrar may grant an application for registration on condition that:
- 11.6.1. the designated location or the designated conveyance concerned does at all times comply with a requirement contemplated in section 11.3.1,
- 11.6.2. any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance, article or place does at all times comply with a requirement contemplated in section 11.3.2, and
- 11.7. The Registrar may, on his own initiative, at the request of the Municipality or of the registered trader concerned, and after giving the registered trader concerned a reasonable opportunity to be heard,

11.7.1. amend a condition;

11.7.2. revoke a condition;

11.7.3. indicate that a condition specified as a condition of registration has been complied with.

11.8. The Municipality may at any time, after giving the registered trader a reasonable opportunity to be heard, withdraw or suspend the registration of such registered trader on the grounds that:

11.8.1. the designated location or the designated conveyance do not comply with a requirement contemplated in section 11.3.1,

11.8.2. any foodstuff, including perishable foodstuffs, sold by the registered trader does not comply with a requirement of a law relating to the health of the public;

11.8.3. any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place used for or in connection with the preparation, handling or sale of foodstuffs, does not comply with a requirement of a law relating to the health of the public.

11.9. When the Municipality decides to refuse an application for registration or to withdraw or suspend such registration, it shall as soon as practicable—

11.9.1. notify the applicant or registered trader concerned in writing, of its decision;

11.9.2. furnish the applicant or registered trader concerned in writing, with the reasons for its decision;

11.9.3. inform the applicant or registered trader concerned in writing, of his right of appeal under section 11.

11.10. The registration of an informal trader who carries on a designated business shall not relieve the registered trader from complying with any law or legal requirement in connection with the designated business, the designated location or the designated conveyance.

12. OBLIGATIONS ON OWNERS OF NON-MUNICIPALITY PROPERTY

12.1. An owner of non-Municipal property which has been demarcated in a trading plan as land where informal trading is carried out must:

12.1.1. ensure that all informal trading that takes place on the owner's property complies with the applicable trading plan and this policy;

12.1.2. allow any officer access to the owner's property to enforce the provisions of this policy;

12.1.3. ensure, at the owner's cost, that sufficient services are provided to maintain acceptable hygienic conditions in respect of the informal trading;

12.1.4. ensure that informal trading does not encroach upon the property of another property owner or the premises of any formal business;

12.1.5. comply with the conditions contained in any agreement referred to in section 6.2.

13. GENERAL PROHIBITIONS ON INFORMAL TRADING

13.1. Subject to the provisions of this policy and any regulations made in terms of section 25, informal trading may not be conducted where it:

- 13.1.1. obstructs access to fire fighting equipment ;
- 13.1.2. obstructs any entry to or exit from a building;
- 13.1.3. substantially obstructs pedestrians in their use of a sidewalk; or
- 13.1.4. obstructs vehicular traffic.
- 13.1.5. obstructs access to street furniture, bus passenger benches and shelters, queuing lines, refuse disposal bins or other facilities intended for the use of the general public;
- 13.1.6. obstructs the visibility of a display window of business premises, and if the person carrying on business in that business premises objects thereto;
- 13.1.7. obstructs access to a pedestrian crossing;
- 13.1.8. obstructs access to a vehicle;
- 13.1.9. obscures any road traffic sign;
- 13.1.10 obstructs access to an automatic teller machine;
- 13.1.11. limits access to parking or loading bays or other facilities for vehicular traffic; or
- 13.1.12. obstructs access to a pedestrian arcade or mall.

14. RESTRICTIONS ON INFORMAL TRADING

14.1. No person shall in any part of the Municipal area, including in any trading plan area:

- 14.1.1. obstruct access to any municipal service or municipal service works;
- 14.1.2. unless prior written approval is granted by the Municipality, on any public road or at any public place:
 - 14.1.2.1. stay overnight at the place where informal trading is conducted; or
 - 14.1.2.2. erect any structure, other than as stipulated in the relevant trading plan and/or permit conditions, for the purpose of providing shelter;
- 14.1.3. carry on business as an informal trader in a manner which:
 - 14.1.3.1. creates a nuisance;
 - 14.1.3.2. damages or defaces the surface of any public road or public place or any other property belonging to the Municipality; or
 - 14.1.3.3. creates a traffic hazard;
- 14.1.4. attach an object to any building, structure, pavement, tree, parking meter, lamp pole, electricity pole, telephone booth, post box, traffic sign, bench or any other street furniture or device in or on a public road or public place that is generally intended for public use;
- 14.1.5. make a fire at any place or in circumstances where it could harm any person or damage a building or vehicle or any structure referred to in section 14.1.4.;

- 14.1.6. deliver or provide goods or equipment to an informal trader if that trader trades in contravention of this policy; and
- 14.1.7. after having been requested to do so by any person carrying out a lawful activity at any place who requires access to a facility or area, fail to remove or move any goods, or refuse to do so.

15. WASTE REMOVAL, CLEANSING AND HYGIENE

15.1. An informal trader must –

- 15.1.1. collect all refuse, scrap or waste material produced while trading and deposit such material only in the refuse receptacles of a size and type approved by the Municipality;
- 15.1.2. maintain the informal trader's allocated informal trading site in a clean and sanitary condition;
- 15.1.3. on a daily basis and at the conclusion of trading, remove from any public road or public place all waste, packaging material, stock and equipment that are utilized in connection with the informal trader's business, unless the Municipality grants a written exemption in this regard;
- 15.1.4. carry on business in a manner which does not cause a threat to public health or public safety; and
- 15.1.5. at the request of an officer or duly authorized employee of the Municipality, move or remove any object so that the area or site from which informal trading is conducted may be cleaned.

16. SPECIAL EVENTS

16.1. The Municipality may permit or prohibit informal trading for purposes of special events on such terms and conditions as it may deem fit, notwithstanding the terms of any trading plan or any permits issued in respect of the relevant trading plan area.

16.2. Any person who trades in a public road or public place and wants to erect a formal structure for purposes of trade must have written permission from Council approving the type of structure to be used, goods and services to be traded. Any exempted traders must apply for written permission from Council no later than two (2) months after the adoption of this policy. If these traders continue to trade without permission from Council they shall be subject to Council approved sanctions.

16.3. Traders who want to trade using formal trading structures on public roads and public places should apply for permission. The applicant should provide the application letter describing the area they want to trade in, the type of goods to be sold and services to be provided. The application letter must also indicate the type of trading structure to be used, the general condition of the structure.

16.4. The Municipality will process the application in consultation with other Council departments including Environmental Health, Development & Planning. The Licensing department should be consulted after the relevant department has approved the lease application prior to informing the applicant. This will ensure that all trading activities conducted on Council land are properly registered and licensed. The Department designated shall be the only department that receives all applications for container trading and communicates with informal traders with regards to container trading. The Traffic, Parks and Solid Waste departments should provide designated department with their requirements and regulations that should be considered when allocating sites.

16.5. Traders who continue to trade and those who want to engage in container trading without permits after the adoption of the policy shall be subject to removal after a notice period of 30 days. If these removed traders want to apply for permits they would have to undergo the process of proper allocation by Council before placing trading structures.

16.6 Permission to trade shall be in the form of a short term tenancy lease agreement which shall state the terms and conditions for container trading. The short term tenancy agreement is recommended because there is a one month termination notice as security of tenure is not permitted in public spaces.

17. GUIDELINES AND POLICIES

17.1. The Municipality may at any time publish guidelines or policies in respect of Informal trading in the municipal area.

18. APPEALS

18.1. A person whose rights are affected by a decision taken by the Municipality in terms of this policy under a duty or power which has been delegated or sub delegated, may appeal against that decision in terms of section 62 of the Systems Act.

18.1.1 An informal trader who is aggrieved regarding the trading space assigned to him/her and /or rental payable may lodge an appeal and request reconsideration of the decisions made in this regard.

18.1.2. The Municipality must ensure that an effective and legally compliant appeals process is in place in order to process any appeals lodged by aggrieved informal trader/s.

18.1.3. Informal traders must be advised of an opportunity to appeal against the allocation of space or rental required of him/her.

18.1.4. The turnaround time for any appeals process initiated in terms of this Clause should not exceed 60 (sixty) days.

19. ENFORCEMENT

19.1. No trader will be permitted to carry on such business in a manner, which creates a nuisance, is a danger or threat to public health and safety, or damages or defaces any Council property.

19.2 Disciplinary and Appeal Procedures will be dealt with as outlined on page 32, paragraph 62 in the Municipal Systems Act, No.32, of 2000: □Where a trader violates the permit conditions, he/she will be informed in writing of the violation and course of action. Permit fees will not be refundable if the permit is revoked or suspended.

19.3. An officer may issue a person with a written warning, if, in the opinion of the officer, that person has traded goods or provided services in contravention of this policy, including but not limited to, in violation of any condition applicable to registration of a registered trader, or any condition imposed in respect of any trading plan area, or of any other applicable law.

19.3. A written warning must:

19.3.1. be signed and dated by the officer who issues it,

19.3.2. state the authority of the officer to sign and issue the warning,

19.3.3. indicate the nature of the contravention the warning refers to,

19.3.4. state the nature of any penalty that may be imposed if such contravention is continued or repeated, including the possible impoundment of any goods, and

19.3.5. set out the official telephone number of the officer and the physical address where he or she may be contacted during ordinary business hours.

19.4. A warning issued in terms of section 19.2 shall lapse on the expiry of six months after the date of its issue.

19.5. A copy of the written warning, signed by the officer who signed such warning in terms of section 19.3.1, shall within twenty four (24) hours of being served in terms of section 19.1, be served on the Registrar who shall record the provisions of such warning in the register referred to in section 9.3.1.

19.6. In the event of a person, within the period of six months referred to in section 19.4, continuing or repeating the contravention in respect of which the written warning was issued to that person, or in the event of a person being issued with two or more warnings in terms of section 19.2 in any one eighteen month period, then an officer may:

19.6.1. refer such contravention to the South African Police Services for investigation and prosecution,

19.6.2. if the person concerned is a registered trader, by written notice handed to such person, suspend the registration of such registered trader, in which case:

19.6.2.1. such notice must be signed and dated by the officer who issues it,

19.6.2.2. state the authority of the officer to suspend the registration,

19.6.2.3. indicate the nature of the contravention the warning refers

to, and

19.6.2.4. set out the official telephone number of the officer and the physical address where he or she may be contacted during ordinary business hours.

19.6.3. impound, in the case of an informal trader, any property used by the informal trader in conducting the informal trade, and in the case of any other person, any property, including but not limited to, goods, equipment, structures and motor vehicles used in and about such informal trading, in which case the officer must:

19.6.3.1. compile a full written inventory of all the property that has been impounded;

19.6.3.2. affix his or her signature to such inventory and the date thereof,

19.6.3.3. provide the person with a copy of the inventory in one of the official languages of the Republic of South Africa that he or she can understand and signed and dated by such official;

19.6.3.4. provide the person with a written notice, in one of the official languages of the Republic of South Africa that he or she can understand, signed and dated by such official, setting out:

19.6.3.4.1. the reasons for such impoundment;

19.6.3.4.2. the address and physical location of the place where such goods as have been impounded shall be stored by the municipality,

19.6.3.4.3. what steps such person may take to obtain possession of the goods impounded, including the payment of impoundment fees and the amount thereof,

19.6.3.4.4. the right to approach a court to challenge the validity of the impoundment or any aspect thereof,

19.6.3.4.5. the provisions of section 23, and

19.6.3.4.6. invite such person to make written or oral representations to the municipality within a period of not less than 30 days on any aspect of the alleged contravention, the impoundment of goods or the circumstances arising there from generally. If a person elects to make oral representations, then the Municipality must make suitable arrangements for that to take place.

19.6.3.5. immediately store the impounded property in an area designated by the Municipality for the storage of impounded property, and

19.7. A copy of the notice referred to in section 19.6.3.4, signed by the officer who issued such notice, shall within 24 (twenty four) hours of being delivered to the person concerned in terms of that section, be served on the Registrar who shall record the provisions of such notice in the register referred to in section 9.4.1.

19.8. If as a result of a referral to the South African Police Services in terms of section 19.6.1:

19.8.1. no charges under this policy are brought against such person, or if such charges are brought against such person and the person is acquitted by a court of such offence, then upon production of the inventory referred to in section 19.5.3.1. to the Registrar together with proof of identity to the satisfaction of the Registrar and payment to him or her of the impoundment costs, the Municipality shall release the property impounded,

19.8.2. a charge under this policy is brought against such person, then a court convicting a person of such offence may, in addition to any penalty imposed under section 24.1, order that the impounded goods must be restored to the possession of the person concerned or that they be sold by public auction.

19.8. If a court orders that the impounded goods must be sold by public auction, then such public auction may be conducted by or on behalf of the Municipality and, after deduction of the impoundment costs and the reasonable costs of the public auction, the proceeds, if any, must be paid to the person concerned.

19.9. If any goods impounded are perishable goods, then the Municipality may, on notice to the person from whom the goods have been impounded, apply to a Magistrates Court for an order authorizing it to dispose of such goods in accordance with such directions as the court may order.

19.10. On prior notice to the informal trader, the Municipality may revoke the registration of a registered trader in the event of such registered trader:

19.10.1. breaching any provisions of the registration and/or this policy or any other law;

19.10.2. being convicted of trading in illegal goods or providing a service unlawfully; or

19.10.3. willfully supplying incorrect information when required to provide the Municipality with information.

CHAPTER 4 – INFORMAL TRADER REPRESENTATIVE ENTITIES

20. PROCEDURE FOR ESTABLISHMENT OF INFORMAL TRADER ASSOCIATION

20.1. The Municipality may, after receiving a proposal referred to in section 21.1 by resolution of the Council —

- 20.1.1. recognize an informal traders association, or committee or
- 20.1.2. recognize the amendment of the constitution of an established informal traders association.

20.2. The Municipality may—

- 20.2.1. require a person who has submitted a proposal in terms of section 21.1 to provide the Municipality with additional information to that required by section 21.1, and
- 20.2.2. instruct the Municipal Manager to conduct an investigation regarding—
- 20.2.3. the establishment of an informal traders association; or
- 20.2.4. a proposal submitted in terms of section 21.1.

21. PROPOSAL FOR ESTABLISHMENT OF INFORMAL TRADERS ASSOCIATION.

21.1. A proposal to recognize an informal trader association must contain at least—

- 21.1.1. the reasons for making the proposal;
- 21.1.2. a proposed name and area of operation for the association;
- 21.1.3. the proposed activities of the association;
- 21.1.4. a description of any existing or proposed informal trading taking place or intended to take place within the proposed area of operation which is relevant to the proposed activities of the association;
- 21.1.5. the proposed constitution of the association,
- 21.1.6. a list of the proposed members or categories of members of the association; and
- 21.1.7. an indication whether there has been consultation in developing the proposal, the names of the persons consulted and their interest in the proposal and the results of the consultation.

21.2. The Municipality may assist a person to develop such a proposal.

22. CONSTITUTION OF INFORMAL TRADERS ASSOCIATION

22.1. The constitution of an informal trader association must, if it is to be recognized by the Municipality, contain at least—

- 22.1.1. details of the principal and ancillary functions of the association;
- 22.1.2. the criteria, procedures and requirements for admitting new members to the association;
- 22.1.3. the voting powers of members;
- 22.1.4. procedures for terminating membership;

- 22.1.5. procedures for electing the management committee of the association;
- 22.1.6. procedural requirements for appointment of employees of the association;
- 22.1.7. procedural requirements for obtaining loans;
- 22.1.8. procedures to amend the constitution, and
- 22.1.9. the financial obligations of members towards the association.

22.2. A constitution must also incorporate such other provisions as the Municipality may reasonably require and must be adopted by the members of the association and approved by the Municipality before it can exercise any powers or perform any duties under this policy.

22.3. A constitution adopted by an informal trader association is binding on all its members.

23. FUNCTION OF INFORMAL TRADERS ASSOCIATION

23.1. In addition to any other function vested in an informal traders association by its constitution, an informal traders association recognized by the Municipality may be appointed to undertake the tasks which may be allocated to a third party in terms of section 6.5.2 of this policy, subject to such terms and conditions as may be agreed upon in writing between the Municipality and the informal traders association concerned.

CHAPTER 5 – OFFENCES AND PENALTIES

24. OFFENCES

24.1. A person is guilty of an offence and liable on conviction to a fine not exceeding R5,000.00 (five thousand Rand) or to imprisonment for a period not exceeding 3 (three) months, subject to the Adjustment of Fines Act 1991, (Act No. 101 of 1991), if such person:

- 24.1.1. contravenes any provision of this policy, any regulations made in terms of section 25, or fails to comply with any condition imposed in terms thereof;
- 24.1.2. threatens, resists, interferes with or obstructs any officer or any employee of the Municipality in the performance of official duties or functions in terms of or under this policy; or
- 24.1.3. deliberately furnishes false or misleading information to an officer or an employee of the Municipality,

CHAPTER 6 – REGULATIONS

25. REGULATIONS

25.1. The Municipal Manager may, by publication in the Provincial Gazette and with the approval of the Council, make regulations not in conflict with the provisions of this policy:

- 25.1.1. regarding any matter which may or must be prescribed in terms of this policy,
- 25.1.2. conferring additional powers on or assigning additional duties to the Registrar or on the head of the department of the Municipality responsible for local economic development,

25.1.3. better providing for exercise of the powers, duties and functions of the Registrar or on the head of the department of the Municipality responsible for local economic development imposed on them under this policy.

25.1.4. providing for the establishment of advisory committees for trading plan areas, the appointment of members and their role;

25.1.5. setting norms and standards for the proper performance of any function contemplated in this policy, and the monitoring and enforcing of such norms and standards;

25.1.6. regarding any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this policy.

25.2. Any regulation with material financial implications must be made with the concurrence of the Chief Financial Officer of the Municipality and in compliance with the Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

25.3. Before publishing any regulation contemplated in subsection 25.1, the Municipality must publish the draft regulations in the Provincial Gazette for public comment.

CHAPTER 7 – MISCELLANEOUS

26. ASSISTANCE TO INFORMAL TRADERS

26.1. The Municipality must appoint an officer conversant in the home languages of informal traders who are illiterate or not able functionally to understand the purpose and consequences of the provisions of this policy and any regulation made hereunder to assist such informal traders in complying with the provisions of this policy and any such regulations and generally to ensure that such informal traders are treated fairly and in accordance with the provisions of this policy, and such officer must at all times act impartially in regard to such assistance and must observe the confidentiality of any information imparted to him or her by such informal trader unless authorised to disclose such information by the informal trader.

26.2 The municipality must provide sector support which is necessary to help small operators move along the development continuum towards greater growth and independence because each sector:

26.2.1 Is of different economic importance to the municipality

26.2.2 Has different prospects for growth for individual operations, ranging from the limited prospects of the survivalists, to the better prospects of service providers such as hairdressers.

26.2.3. Presents different problems of control (e.g. hazardous chemicals in drum selling, the seasonality of mielie-cooking).

26.2.4. Offers different possibilities for support, based on all of the above.

26.3 External sources can provide this sector support and play a number of creative roles in providing for example:

26.3.1 Economically trained sector specialists for those sectors where large numbers of traders operate or where growth prospects are more positive.

26.3.2. Training in general business skills

26.3.3. Health education with regard to the handling of food for sale.

26.3.4. Legal advice about small business development

26.3.5. Subsidisation of selected training providers

26.3.6 Co-operation with formal business.

26.3.7. □ Facilitation of access to financial services

26.4.1. Incubation is a process through which trainees with basic business training are linked with others who have the common vision to identifying new locations and products to be offered for sale. The concept has the potential to accommodate large numbers of beneficiaries, depending in part on the goods and/or services that are the subject of incubation.

26.4.1. It shall be the responsibility of Municipality to run Incubation Programmes for informal traders, based on a transparent and consultative approach of which all involved shall be made aware. The criteria for the selection of participant beneficiaries shall also take into account the needs and expectations of targeted informal traders.

26.4.2. Traders who opt to participate in any Incubation Programme may be required to discontinue their individual businesses in favour of joint efforts with colleagues.

27. TRANSITIONAL ARRANGEMENTS

27.1. Notwithstanding the enactment of this policy:

27.1.1. any declaration in terms of the Businesses Act, 1991 (Act No. 71 of 1991) of an `area within the jurisdiction of the Municipality as an area in which the carrying on of the business of street vendor, peddler or hawker may be restricted or prohibited, shall remain valid until such time as the Municipality adopts a trading plan in respect of such area in terms of this policy;

27.1.2. where an informal trader had been issued with a lease prior to the enactment of this policy which permits trading from a particular bay, such lease shall remain valid until the Municipality adopts a trading plan in respect of the area to which such lease applies, or such lease terminates in terms of

27.2. The lessee under any lease referred to in section 28.1.2 shall, if such lease is cancelled as a consequence of the area leased being included in a trading plan area, be given an opportunity to apply for a trading bay or to be permitted to carry on informal trading in any market established in terms of the applicable trading plan.