

Cape Agulhas, South Africa

## Street Trading

Legislation as at 3 October 2005

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# Cape Agulhas South Africa

## Street Trading By-law, 2005

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Commenced on 3 October 2005

*[This is the version of this document from 3 October 2005 and includes any amendments published up to 21 October 2022.]*

### 1. Definitions

In this by-law, unless inconsistent with the context—

"**authorised employee**" means an employee of the municipality authorised to perform the functions and duties of the authorised employee in terms of the provisions of this by-law;

"**bay**" means an area on a street, the boundaries of which are clearly marked out, and allocated with a number which also appears on a plan approved by the council;

"**council**" means the council of the municipality;

"**declaration**" means a notice published by the council in the Official Gazette, in terms of which an area as defined in such declaration is restricted for trading;

"**municipality**" means the Municipality of Cape Agulhas;

"**municipal manager**" means the official appointed by the council in the capacity of municipal manager;

"**political structure**" a committee of the council or a ward committee, as contemplated by Chapter 4 of the Structures Act;

"**permit**" means an official approval in terms of which a trader is allowed to trade from a bay situated within a restricted area, subject to such terms and conditions as may be imposed by the council;

"**restricted area**" means an area in which street trading has been restricted by the Council in terms of a declaration;

"**street**" means any public road, street, thoroughfare, parking bay, parking area, road or street reserve, sidewalk, verge, bridge or drift;

"**Structures Act**" means the Local Government: Municipal Structures Act, 1998 ([Act 117 of 1998](#));

"**trade**" means the carrying on of a business, either by selling wares or by rendering a service to the public and "street trading" has the same meaning;

"**trader**" means a person who trades on a street;

### 2. Application of this by-law

- (1) This by-law replaces the provisions of section 6A of the Businesses Act, [Act 71 of 1991](#).
- (2) This by-law does not derogate from the provisions of any other law relating to the licensing and control of undertakings that sell food to the public.
- (3) The provisions of this by-law do not derogate from the terms of any lease agreement entered into by the council in respect of a street.

- (4) The provisions of this by-law do not apply in respect of any market or sale approved by the council in a restricted area.

### 3. Restrictions on street trading

- (1) No trader may trade contiguous to:—
- (a) a building belonging to, or occupied by, the state or the municipality;
  - (b) a church or other place of worship;
  - (c) a building declared as a monument in terms of legislation;
  - (d) a building in which business is being carried on by any person who sells goods of the same nature or of such a similar nature to goods being sold by the trader concerned;
  - (e) a building used for residential purposes.
- (2) No trader may trade at a place where:—
- (a) a fire hydrant or an entrance or exit to a building is obstructed;
  - (b) vehicular and pedestrian traffic is obstructed or a traffic hazard is created;
  - (c) any facility for the use of the general public is obstructed;
  - (d) the visibility of a display window in business premises is obstructed;
  - (e) traffic signs, road markings, notices or signs are obscured;
  - (f) access to loading and parking bays, vehicles or other facilities for vehicular or pedestrian traffic is limited; or
  - (g) free access to municipal service works is obstructed.
- (3) No trader may at the stand where business is carried on:—
- (a) stay overnight;
  - (b) create a nuisance;
  - (c) damage or deface the surface of a street or any municipal property;
  - (d) erect a structure other than an umbrella or portable sun screen;
  - (e) create a hazard to traffic;
  - (f) attach any object by any means to a building, street furniture, structure, pavement, tree, lamp pole, electrical pole, telephone facility, post box, traffic sign, parking meter or bench;
  - (g) make a fire without the written permission of the municipal manager;
  - (h) fail to move or remove any goods after having been requested to do so by an authorised employee;
  - (i) accumulate, dump, store or deposit any refuse or waste materials on any land, street or premises other than in a refuse receptacle approved or provided by the council;
  - (j) allow an unclean or unsanitary condition to develop;
  - (k) keep his or her goods in an unclean or unsanitary condition;

- (l) fail, at the conclusion of trading, all waste, packaging material, stock and equipment;
- (m) pose a threat or danger to public health or safety, or
- (n) fail to, at all times, carry on his or her person a copy of any written permit or authorisation issued in terms of this by-law and must, on request of an authorised employee, produce such authorisation.

#### 4. Removal and impoundment

- (1) An authorised employee may remove and impound any goods that a trader failed or refused to remove from a place after having been requested to do so by the authorised employee, or which had been left there or abandoned—
  - (a) which the authorised employee reasonably suspects are used in connection with street trading, or
  - (b) which is found at a place where the business of street trading is restricted in terms of this by-law and which is likely to constitute a contravention of any provision of this by-law.
- (2) An authorised employee acting in terms of subsection (1) must—
  - (a) except in the case of goods that have been left or abandoned, issue to a trader a receipt for any goods so removed and impounded, and
  - (b) forthwith deliver such goods to a place determined by the municipal manager.
- (3)
  - (a) The owner of goods removed and impounded in terms of subsection (1) is, subject to the provisions of section 5, liable for any expenses incurred by the municipality, and the municipality may keep such goods until all such expenses have been paid or deal with the goods as contemplated in section 5, and
  - (b) a certificate issued under the hand of the municipal manager is proof of any expenses incurred by the municipality.

#### 5. Disposal of impounded goods

- (1) Any perishable goods impounded in terms of section 4(1) may at any time be sold or destroyed by the municipal manager, and the proceeds of a sale, less any expenses incurred by the municipal manager, must, upon presentation of the receipt contemplated by section 4(2), be paid to the owner; provided that if such proceeds are not claimed within three months of the date on which the goods concerned were sold, the proceeds will be forfeited to the municipality.
- (2) The owner of goods impounded in terms of section 4(1), may, in the case where the goods were not destroyed or sold in terms of subsection (1), on production of the receipt contemplated by section 4(2), reclaim the goods; provided that if the goods remain unclaimed after three months, the municipal manager may sell the goods and the proceeds will be forfeited to the municipality.
- (3) When goods are reclaimed in terms of subsection (2), any outstanding expenses incurred by the municipality in connection with the removal and impoundment, must first be paid before the goods may be returned.
- (4) In the event of the proceeds of any sale of goods contemplated by this by-law not being sufficient to defray the expenses incurred by the municipality, the owner of such goods will remain liable for so much of such expenses as is not defrayed by the proceeds from the sale of such goods.

## 6. Declaration of restricted area

- (1) Council may declare any area as an area in which trading is restricted.
- (2) No person may trade in a restricted area:—
  - (a) unless such person is in possession of:—
    - (i) a valid permit or
    - (ii) a lease agreement with the council, or similar authorisation issued by council in respect of municipal land.
  - (b) in contravention of the conditions of a permit or the terms of a lease agreement.

## 7. Procedure for declaration of a restricted area

- (1) Whenever the council has reason to believe that the number of traders in a specific area have assumed, or have the potential to assume, such proportions that the need has arisen or may arise that trading in such area should be restricted, the council may investigate the feasibility of such restriction.
- (2) An investigation into the feasibility of restricting trading, must address the following:—
  - (a) whether the number of traders in the area have, or may have the potential to negatively affect—
    - (i) the established businesses, residences, tourist potential and accessibility of shoppers to the area
    - (ii) the movement of traffic and/or pedestrians in the area, and
    - (iii) present or future planning and development of the area,
  - (b) whether more effective supervision or control of the area, will make a declaration unnecessary;
  - (c) whether the intended restriction will drive out of business a substantial number of traders;
  - (d) the various options open to the council, whether or not such an area is declared restricted;
  - (e) the preparation of a plan showing:—
    - (i) the position of the area concerned;
    - (ii) if restricted, the number of traders to be allowed in such area, and
    - (iii) locations where traders may be allowed, and
    - (iv) if restricted, the criteria to be used for the allocation of bays;
  - (f) whether any traders belong to associations, and, if so, the names, membership and area of influence of such associations,
  - (g) any other information which may have an influence in the consideration of the declaration of such area, and
  - (h) the views of any municipal structure, where applicable.

- (3) If the council, after considering the findings of the investigation, finds a need to restrict the area, it must instruct the municipal structure concerned to enter into a process of public participation and advise council of the outcome thereof.
- (4) The council must consider the recommendations of the structure concerned, as well as every objection submitted to the structure/s concerned and the comments of the structure/s thereon, and will thereafter resolve on the declaration of the area concerned, as well as the criteria for issuing permits.
- (5) The declaration will take effect on the date of publication in the Provincial Gazette.
- (6) Copies of the notice of declaration referred to in sub-section (5) above, must be posted at municipal offices selected by the municipal manager.

## **8. Permits for street trading in declared areas**

- (1) The council will demarcate bays in a restricted area in accordance with the plan contained in the declaration contemplated in section 4(5).
- (2) Any person who wishes to trade in a demarcated bay, must apply on a form available at the municipal offices in or nearest to the declared area.
- (3)
  - (a) Applications for permits will be considered by the municipal manager in terms of criteria determined by the council in the resolution taken in terms of section 7(4), and
  - (b) Where the demand for bays exceeds the availability, a waiting list of applicants will be opened and bays will be allocated by the municipal manager in terms of the criteria.
- (4) Permits for bays are valid for one month and must contain at least the following
  - (a) the name, address, telephone number and identification number of the permit holder;
  - (b) the number of the bay, the location of the bay, and the number of the map of the declared area;
  - (c) the conditions in terms of which the permit was issued;
  - (d) the signature of the official who issues the permit, and
  - (e) the official date stamp of the office where the permit was issued.

## **9. Appointment of authorised officials and delegation**

- (1) The municipal manager may appoint municipal employees as authorised employees to carry out any duties in terms of this by-law.
- (2) The municipal manager may delegate any power or function conferred on him or her in terms of this by-law to any employee of the municipality.

## **10. Offences and penalties**

Any person who—

- (a) contravenes any provision in this by-law or fails to comply with any condition imposed in terms thereof;

- (b) threatens, resists, interferes with or obstructs any councillor, officer or authorised employee of the council in the exercise or performance of his or her duties or functions in terms of this by-law, or
- (c) deliberately furnishes false or misleading information to a councillor, officer or official of the council, is guilty of an offence and liable on conviction to the payment of a fine.