

# SOL PLAATJE MUNICIPALITY



## **Informal Trading Policy**

*Final version of 1 July 2021*

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## 1. DEFINITIONS

"**Businesses Act**" means the Businesses Act, No. 71 of 1991 including any regulations issued thereunder;

"**Municipality**" means the municipality of the Sol Plaatje Municipality duly established in terms of the Local Government: Municipal Structures Act, No. 117 of 1998;

"**Municipal property**" means property owned, leased by, or under the management control of the Municipality;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**Council**" or "the Council" means the council of the Municipality as contemplated in section 118 of the Local Government: Municipal Structures Act, No. 117 of 1998;

"**illegal goods**" means :- goods that are illegal to sell or to buy (including but not limited to counterfeit goods as defined in the Counterfeit Goods Act No. 37 of 1997); and goods that are bought or sold in a manner which contravenes the law.

"**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 or releasing of the impounded property and any other associated costs;

"**informal trader**" means a person, or an enterprise which is not registered or incorporated in terms of the corporate laws of South Africa and which engages in informal trading;

"**informal trading**" means the trading in goods and services in the informal sector by an informal trader and which typically constitutes the types of trading described in section 5;

"**market**" means a demarcated area within a trading area which is designated as such in a trading plan and which is managed in a co-ordinated manner;

"**SPM**" means the Sol Plaatje Municipality;

"**Municipal Manager**" means the Municipal Manager of the Municipality;

**"non-municipal property"** means property that is situated within the jurisdiction of the Municipality but which is not owned, leased by, or under the management control of the Municipality;

**"nuisance"** includes, but is not limited to, an act or omission which is offensive, injurious or dangerous to health, or which materially interferes with the ordinary comfort, convenience, peace or quiet of the public or which adversely affects the public at large;

**"officer"** means :-

- (i) a traffic officer appointed in terms of section 3 of the Road Traffic Act, No. 29 of 1989 or section 3A of the National Road Traffic Act No. 93 of 1996 as the case may be;
- (ii) a member of the South African Police Service;
- (iii) a peace officer contemplated in section 334 of the Criminal Procedure Act, No. 51 of 1977;
- (iv) an employee, agent, representative and/or service provider of the Municipality who are specifically authorised by the Municipality in this regard;

**"permit-holder"** means an informal trader who has been granted a permit by the Municipality to conduct informal trading in a trading area;

**"public place"** means any square, park, recreation ground, garden, commonage or enclosed or open space in the area of the municipality which:

- (i) 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
- (ii) 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
- (iii) 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;

**“Registrar”** means the Registrar of Informal Traders appointed by the Municipality in terms of this policy.

**“registration”** means a registration as an informal trader in accordance with this policy;

**“registered trader”** means an informal trader who is registered as an informal trader by the Municipality;

**“special events”** may include, but are not limited to, sports events, night markets, cultural events, music festivals, promotional, filming activities and religious events;

**“Systems Act”** means the Local Government: Municipal Systems Act, No. 32 of 2000 (as amended)

**“trading plan”** means a trading plan adopted by the Municipality to govern informal trading within a trading area.

**“trading area”** means an area in respect of which a trading plan has been adopted in terms of this policy;

**“trading spot/site”** means a specific area identified inside the trading plan;

**“Youth”** means a young person who is not above the age of 35 (thirty five) and is 18 (eighteen) years or older.

## **2. PREAMBLE**

- (a) In terms of the Constitution, the Municipality is responsible for promoting social and economic development and regulating informal trading within its area of jurisdiction.
- (b) The Municipality recognises 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.
- (c) 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.
- (d) 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 within a well-managed municipal area.

## **3. LEGISLATIVE FRAMEWORK**

- Constitution of the Republic of South Africa, 1996
- Counterfeit Goods Act (Act No. 37, 1997)
- Disaster Management Act (Act No 57 of 2002) and Covid Regulations
- Environmental Conservation Act (Act No. 73 of 1989): Noise Control Regulations No.75;
- Municipal Systems Act (Act No. 32 of 2000 as amended)
- Municipal Structures Act (Act No. 117 of 1996)
- Meat Safety Act (Act No. 40 of 2000)
- Municipal Finance Management Act (MFMA) Act No 56 of 2003)
- National Building Regulation (Act No. 103 of 1977 as amended 49 1995);
- National Environmental Management Act (Act No. 107, 1998);
- National Standards Act (Act No. 8 of 2008);
- Promotion of Administrative Justice Act (Act No 3 of 2000)
- Road Ordinance (Act No. 19 of 1976);
- The Businesses Act (Act No. 71 of 1991);
- The Health Act (Act No. 63 of 1977): and Regulation 918;
- The Labour Relations Act (Act No. 66 of 1995
- The National Road Traffic Act (Act No. 93 of 1996);

#### 4. PURPOSE OF THE POLICY

- (a) Regulate informal trading within its area of jurisdiction
- (b) To clarify the Municipality's position on and approach to informal trading to all relevant and interested stakeholders;
- (c) To form the basis for the review and revision of all applicable policies and by-laws that regulate informal trading within the jurisdiction of the Municipality;
- (d) To create a platform and opportunity, particularly for the unemployed to participate in the economy in order to make a living.

#### 5. SCOPE: POLICY PARAMETERS

The different types of informal trading that take place in the Municipality are covered by the policy:

**Street trading area is 3 meters in length and 2 meters in width, in areas where the space allows and does not obstruct traffic, pedestrian and/or vehicles.**

- a) Seasonal Traders (traders who respond to seasonal or once-off/short term trading opportunities)
- b) Street/kerbside trading;
- c) Trading in pedestrian malls;
- d) Public Markets (i.e. markets operating on public land, such as flea & craft markets, etc.);
- e) Trading at road intersections, selling newspapers, flowers, accessories and tradeable good (as permitted in terms of Regulation 322 of the national Road Traffic Regulations, 2000);
- f) Trading in public open spaces (including parks etc.) and the usage of informal trading mobile containers;
- g) Mobile Traders (such as from a bicycle, a caravan or any other vehicle:
  - (i) *Vehicle based:* such as fish, ice-cream, prepared food, soft drink, fruit and veg, or other agricultural produce traders who trade from their vehicles and respond to opportunities by relocating their trading station periodically.)

- (ii) *Pedestrian based: roving traders- who sell their wares in streets, and public spaces and respond to trading opportunities by engaging their target market directly;*
- h). Trading at special events;
- i). Informal Car Wash (36 m<sup>2</sup> and under);
- j) Containerised Trading: (Shipping containers) also referred as temporary building as guided by SANS 10400 Part A, the application must be accompanied by a building plan authorised/approved by the SPM building control section.
- k) Newspapers, magazines at corners
- l) Flowers, plants and accessories
- m) informal promotion, and marketing at street corners

## **6. RIGHT TO ENGAGE IN INFORMAL TRADING**

- (a) Subject to provisions of this policy, any regulations made and any other applicable law, informal trading is permitted in any part of the Municipality; subject to the prohibitions and restrictions outlined in this policy.

## **7. ADOPTION OF TRADING PLANS**

- (a) The Municipality must, where appropriate, adopt trading plans, particularly in areas where there is a significant overlap between formal and informal trading. A trading plan may allow and regulate informal trading on non-Municipality property, subject to the rights of the owners of such property.
- (b) A trading plan must:
  - (i) define the geographic boundary of the trading area to which the trading plan will apply;
  - (ii) demarcate informal trading bays and markets where informal trading is permitted within such trading area;
  - (iii) 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;
  - (iv) the criteria to be applied to the allocation of trading bays and access to and occupation of markets;
  - (v) set out any tariff applicable and payable in respect of the occupation of a trading bay or market;



- (vi) make provision for the management and administration of the trading plan area; and
  - (vii) 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.
- (c) A trading plan may include any other matters governing informal trading in the relevant trading area, including without limitation such as:
- (i) the manner in which social and economic development will be promoted through the trading plan;
  - (ii) the demarcation of the area within the trading area which constitutes a market
  - (iii) the manner in which sensitive heritage and environmental areas within the proposed trading area will be protected;
  - (iv) matters relating to 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:
    - ✓ the management and operation of the market;
    - ✓ the management of informal traders within the market;
    - ✓ ensuring that all relevant persons participate in appropriate decisions
    - ✓ providing guidance to the informal traders operating in the market with business support and development services; and
    - ✓ any service which is in addition to the services provided by the Municipality.
- (e) A trading plan must comply with the requirements of this Policy and with any other applicable law.
- (f) Any person shall be entitled to request that the Municipality to consider the adoption of a trading plan; provided if the proposed trading plan is contemplated on taking place on non- municipal property; such a request shall be accompanied by the written consent of the owner of such property. The Municipality must consider and decide upon the request within a reasonable period.
- (g) When considering a request for the adoption of a trading plan, the Municipality shall have due regard to any existing and proposed trading

plans in the vicinity of the proposed trading area in order to determine the desirability of the adoption of a trading plan.

- (h) Informal trading shall only be allowed on the restricted bays in areas that shall be designated for that purpose, subject to being in possession of a valid permit.

## **8. PUBLIC PARTICIPATION IN RESPECT OF THE ADOPTION OF THE TRADING PLAN**

- (a) Before adopting a trading plan, the Municipality is obliged to:
- (i) consult with interested and affected persons, including participants in the informal and formal sectors and occupiers of land in the vicinity of the trading area to of the draft trading plan;
  - (ii) compile a draft trading plan following the consultation process in terms of paragraph (i) above;
  - (iii) give notice to all interested and affected persons by:
    - ✓ publication of a notice in a local newspaper regularly circulating in the municipal area, such notice must be done in accordance with the languages widely spoken in that area;
    - ✓ erecting such notices in or at the intended location of the trading plan area designated in such trading plan;
- (b) Provide sufficient information to enable interested and affected persons to identify the intended location and purpose of the trading plan and invite such persons:
- (i) To lodge objections or comments on the demarcation of a trading plan within a period specified in such notice, which period shall not be less than 60 (sixty days) and
  - (ii) Invite interested and affected parties to a public meeting;
  - (iii) The public meeting referred to must be held:
    - ✓ In the vicinity of the proposed trading plan area; and
    - ✓ After seven (7) days but not later than sixty (60) days from the date of publication of the notice.
- (c) At the public meeting, the Municipality must :-

- (i) be represented by a person duly authorised by the Municipality who must make a presentation to the public present at the meeting in which the draft trading plan is explained;
- (ii) reasonably respond to any queries related to the draft trading plan which may be posed by the public at the public meeting; and
- (iii) give interested and affected parties an opportunity to make comments and objections at the public meeting, and such comments and objections must be recorded.

### **Consideration of options prior to adoption of a trading plan**

(d) The Municipality must consider all objections or comments that the Municipality may receive.

(e) After having considered the comments and objections, the Council must, within a reasonable period from the commencement of the public participation process in respect of the relevant draft trading plan, notwithstanding the provisions of any other law, and at a meeting of the Council;

- (i) adopt the draft trading plan;
- (ii) amend and adopt the draft trading plan; or
- (iii) reject the draft trading plan;

(f) Notwithstanding the provisions of section 59 of the Systems Act, the Council may not delegate the decision-making powers referred to sections 7 and 8.

(g) In the event that the Municipality adopts a draft trading plan, a notice must be published in 2 (two) daily newspapers circulated in the trading area, unless a community newspaper which is free to the public is circulated in such area in which case 1 (one) of the 2 (two) notices must be published in such community newspaper, and the Provincial Gazette, which informs the public:-

- (i) that the draft trading plan has been adopted as a trading plan;
- (ii) of the key aspects of the trading plan including the date upon which it shall become effective; and
- (iii) that the trading plan is available for inspection at a specified location.

## **9. AMENDMENT, REVOCATION AND REVIEW OF TRADING PLANS**

The Municipality :-

- (a) may amend or revoke an adopted trading plan, provided that:
- (i) if the amendment deviates materially from the trading plan, the Municipality must comply with section 7 with the necessary changes required by the context, provided that where persons are adversely affected by a proposed amendment, such persons will be afforded their rights; or
  - (ii) In the case of a revocation, the Municipality shall afford all affected persons their rights.

## **10. REGISTRATION OF INFORMAL TRADERS**

- (a) The Municipality must:
- (i) designate an official in the Local Economic Department and in the full time employ of the Municipality as its Registrar of Informal Traders,
  - (ii) 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.
- (b) The SMME Manager shall be the chairperson of the Informal Trader Registration Committee and such head shall be primarily responsible for the administration of this policy.
- (c). The Registrar must:
- (i) establish and maintain an annual Register of Informal Traders;
  - (ii) administer the registration process comprising at least:
    - the receipt of applications for registration,
    - the investigation of the feasibility of the application and the
    - compilation of a report thereon,
    - the submission of the application and the feasibility report to the Informal Trader Registration Committee,
    - the issue of a Registration Card.

- (d) 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.
- (e). The Register of Informal Traders must at a minimum contain:
- (i) the full name and surname of the informal trader;
  - (ii) the identity number of the informal trader concerned;
  - (iii) the physical and postal address of the informal trader concerned;
  - (iv) 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 stall/bay or trading spot/site allocated to such informal trader in accordance with the applicable trading plan;
  - (v) a description of the goods and / or services that the informal trader concerned may be authorized by such registration to sell or provide;
  - (vi) a distinguishing registration number, and
  - (vii) any other information that may be required by this policy or be prescribed by regulation.
- (f). A registered trader must be issued with an **Permit Card** 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.
- (g) The production of the Permit Cards shall be proof of the registration of the registered trader and of the information contained thereon.
- (h). A registration card remains the property of the Municipality at all times and is issued 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.

- (i) Any person who intends carrying on business as an informal trader must register as an informal trader with the Municipality in terms of this policy.
- (j). 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 and 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.
- (k). Any informal trader on whom a notice and instruction is served in terms of section 10.(j) shall within sixty (60) days of the notice and instructions being served on him of her.
  - (i) apply for registration as an informal trader, failing which he or she shall deemed to be trading in contravention of this policy unless he or she ceases such informal trading forthwith, or
  - (ii) submit prove to the Municipality that he or she is not an informal trader.
- (l). 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 as informal traders, by:
  - (i) publication of a notice in a local newspaper regularly circulating in the Municipal area, such notice to be in the most widely spoken language of that area;
  - (ii) such notices must be erected containing information at or near all locations in the Municipal area where informal trading is or is likely to take place, and

- (iii) by causing the information contained in such notices to be broadcast on local radio-stations,10(m). Compliance with such notices, shall be deemed to constitute the notice and instruction required to be given to all informal traders carrying on informal trading at the commencement of this policy.
- (m). The Municipality is entitled to charge a registered trader:
  - (i) trading fee; and
  - (ii) an additional fee or tariff, which is to be determined by the Municipality in its sole discretion, in respect of additional costs or services (eg. costs associated with electricity or water as the case may be)
- (n). In order to qualify for registration, as a street trader, stall operator or informal car wash operator, the applicant:
  - (i) may not be employed (whether in the private or public sector);
  - (ii) must apply to be registered as a registered trader;
  - (iii) must be a South African citizen, and reside within the jurisdiction of the Municipality;
  - (iv) may be a naturalised foreigner or any other foreigner who resides legally in South Africa;
  - (v) must personally and actively operate the stall or street trading spot
  - (vi) must not employ and actively utilize the services of more than two (2) persons (for stalls) and five (5) persons for street trading spot;
- (o). The Municipality must take into account the following factors when considering an application for registration:
  - (i) the applicant's ability to meet the trading hours (if any) for the relevant trading plan area as the Municipality may determine;
  - (ii) Preference will be given to youth, women and disabled persons;
  - (iii) 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;
  - (iv) 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;

- (v) the need to give preference to unemployed applicants;
  - (vi) 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;
  - (vii) whether the applicant had his/her registration revoked and the reasons for such revocation.
- (p). 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
- (i) to specify:
    - the trading hours during which the registered trader may trade;
    - the period within which the renewal of registrations must be made;
    - the nature of the goods or services the registered trader is registered to trade; and
    - the registered trader's trading bay number;
  - (ii) allocate the informal trader an alternative bay in the same trading plan area;
  - (iii) specify the type of structure(s), if any, which may be erected on a trading bay and/or in a trading plan area;
  - (iv) impound trading goods in the event of a contravention of any provision of this policy or any other law;
  - (v) 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;



- (q). 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:
- (i) relocate a registered trader,
  - (ii) suspend the validity of any registration, or
  - (iii) prohibit a registered trader from trading at the relevant trading bay,
  - (iv) 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.
- (r). The registration of a registered trader may be cancelled by the Registrar:
- (i) the registered trader voluntarily and in writing consents to such cancellation,
  - (ii) upon the death of the registered trader,
  - (iii) for failing to pay the monthly rental fee on a sustained basis (three months) without reasonable cause;
  - (iv) failing to trade for a period of three months without reasonable cause in terms of the terms and conditions of the permit;
  - (v) upon the expiry date of the permit based on valid and justifiable reasons;
  - (vi) in the event of a transfer of registration 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

- (vii) the relevant provisions of this policy are invoked by the Municipality.
  
- (s) Registered informal traders, in respect of which a certificate of acceptability is required from the Municipality's Department Environmental Health, must comply with such requirements in addition to the registration process. This refers in particular to businesses that engage in the:
  - (i) Sale or supply of meals or perishable foodstuffs;
  - (ii) Provision of certain types of health facilities or entertainment;
  - (iii) Sale or supply of prepared foodstuffs.
  - (iv) Provision of informal hairdressing services, cosmetology or beauty services, body piercing and tattooing services.
  
- (t). Special events (special events which are located alongside stadiums and public event areas and occur specifically at public events, such as music concerts, festivals and fairs, religious celebrations and cultural holidays.
  - (i) What is commonly referred to as flea markets, bargain markets, craft markets artefacts and curio markets, tourist markets, and which are not permanent in nature, are included in the definition of special events.
  - (ii) Special events 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.
  - (iii) 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.
  - (iv) 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.

- (u). Any action taken by the Municipality in terms of this section 10 of this policy, must comply with the provisions of the Promotion of Administrative Justice Act (Act No 3 of 2000).

## **11. PERMITS**

- (a) No person may conduct informal trading on municipal property in a trading area without a valid permit from the Municipality. The SMME Manager with the approval of the LED Manager shall have the authority to approve the issuance of permits.
- (b) The Municipality shall not provide permits to foreigners in excess of 20% (twenty per cent) of the total permits issued per trading area.
- (c) The Municipality is entitled to charge a permit-holder:
  - (i) a trading fee;
  - (ii) an additional fee or tariff, which is to be determined by the Municipality in its sole discretion, in respect of additional costs incurred or services provided by the Municipality, including but not limited to circumstances where the permit-holder trades within a market.
- (d) The Municipality must take into account the following factors when considering an application for a permit :
  - (i) who resides in or close to the trading area for which the permit is applied;
  - (ii) the applicant's ability to meet the trading hours for the relevant trading area as the Municipality may determine;
  - (iii) the need to give preference to youth, women and persons who are disabled;
  - (iv) 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 area or in its immediate vicinity;
  - (v) the need to give preference to unemployed applicants;

- (vi) the need to give preference to applicants who do not share a household with an existing permit-holder, unless:
- the number of available trading bays for the relevant trading area is more than the number of applicants seeking permits for those trading bays; or
  - the applicant who shares a household with a permit-holder is not a dependant or financially reliant upon such permit-holder;
  - where trading plans are adopted in areas previously not subject to such plans, the need to give preference to applicants who have an established informal trading operation in the location for which a new trading area is adopted.
- (e) Notwithstanding the provision contemplated in paragraph 10(e), the Municipality may allocate only one (1) Stall/Bay or one (1) Trading area/spot/site per applicant.
- (f) The Municipality is entitled to impose such terms and conditions in respect of permits as it deems fit, subject to the provisions of the applicable trading plan, including but not limited to the right to specify the:
- (i) trading hours during which the permit-holder may trade;
  - (ii) nature of the goods or services the permit-holder is permitted to trade; and
  - (iii) permit-holder's trading bay number;
  - (iv) allocate the informal trader an alternative bay in the same trading area;
  - (v) specify the type of structure(s), if any, which may be erected on a trading bay and/or in a trading area;
  - (vi) impound trading goods in the event of a contravention of any provision of this Policy or any other law;
  - (vii) suspend a permit for a special event on reasonable prior notice with no compensation payable to the informal trader, notwithstanding that informal trading may be permitted by the Municipality at the special event;
  - (viii) provided that two written warnings have been issued to the informal trader and after affording the relevant informal trader an opportunity to make written representations, revoke or suspend a permit in the event of an informal trader:

- breaching any provisions of the permit and policy or any other law;
- being convicted of trading in illegal goods or providing a service unlawfully; or
- wilfully supplying incorrect information when required to provide the Municipality with information.

(g) Notwithstanding the contents of the relevant trading plan, the Municipality has the right to, upon reasonable prior notice to the informal trader and with no compensation payable by the Municipality to the permit-holder, temporarily:

- (i) relocate a permit-holder;
- (ii) suspend the validity of a permit; or
- (iii) prohibit a permit-holder from trading at the relevant trading bay; should it be necessary to do so because of the performance of activities which renders the continuation of trading from the relevant trading bay impractical or severely inconvenient.

(h) Activities referred to in section 11(g) shall include, but not be limited to, maintenance or construction of infrastructure or buildings performed by the Municipality, property developments, alterations or refurbishments by any entity, or activities by public entities conducted in terms of their powers and functions.

## **12 TRANSFER, RENEWAL AND VALIDITY OF PERMITS**

(a) A permit may be permanently transferred, with the written approval of the Municipality, to a dependant, or an assistant acting on behalf of the dependant, who will continue trading until the permit is no longer valid, in the event of :

- (i) the death of the permit-holder; and
- (ii) if the loss of income generated by the informal trading would place the dependent under undue or severe economic hardship.

(b) However, the Municipality reserves the right to reject or decline such a transfer referred to in section 12(a) and compel the applicant to re-apply.

- (c) permit may be temporarily utilised, with the written approval of the Municipality, to a dependent or, where there is no dependent, to an individual nominated by the permit-holder, where the permit-holder:
- (i) is incapable of for personal reasons such as an illness, pregnancy, family responsibility, religious or cultural matters, or any other personal matter, for a period no longer than 6 months, provided that:
    - a written affidavit is provided to the Municipality stating the nature and period for which the permit-holder requires the temporary utilization of the permit.
    - the dependent or assistant is only permitted to utilize the permit for the period stipulated in the affidavit; such utilization does not transfer any rights to the person who temporarily utilizes the permit.
- (d) Subject to paragraph 11(a), a permit-holder may not transfer a permit to any other person in any manner, including but not limited to, by way of lease/ Subletting or sale.
- (e) A permit must immediately be returned to the Municipality should the Municipality revoke such permit in the event the permit holder no longer wishing to trade as an informal trader.
- (f) An application for the renewal of a permit must be submitted to the Municipality at at least three (3) months before the expiry date of the permit.
- (g) A permit shall remain valid for a period of three (3) years from the date of issuance, subject to compliance with the Municipality conditions, regulations and by-laws.

### **13. OBLIGATIONS ON OWNERS OF NON-MUNICIPAL PROPERTY**

- (a) An owner of non-Municipality property which has been demarcated in a trading plan as land where informal trading is permitted, must:
- (i) ensure that all informal trading that takes place on the owner's property complies with the applicable trading plan and this Policy;
  - (ii) permit any officer access to the owner's property to enforce the provisions of this policy;

- (iii) ensure, at the owner's cost, that sufficient services are provided to maintain acceptable hygienic conditions in respect of the informal trading;
- (iv) ensure that trading from formal business premises do not encroach upon the property of another property owner.

#### **14. GENERAL PROHIBITIONS ON INFORMAL TRADING**

Informal trading may not be conducted:

- (a) in a garden or park under the control of the Municipality and to which the public has the right of access, unless such area has been declared by the Municipality as a trading area;
- (b) on a verge or sidewalk (as defined in section 1 of the National Road Traffic Act, No. 93 of 1996 and Section 64 of the Road Ordinance 19 of 1976) next to:
  - (i) a building belonging to or occupied solely by the State or Municipality, unless the Municipality has given its prior written consent after it has:
    - (ii) duly considered any relevant trading plan; and
    - (iii) consulted with the relevant property owner and, where relevant, the tenant of such property;
- (c) a place of worship such as a church, synagogue or mosque unless a trading plan permits informal trading at that area; or
- (d) a national monument as determined in accordance with the provisions of the National Heritage Resources Act, 25 of 1999;
- (e) at a place where it :-
  - (i) obstructs access to firefighting equipment;
  - (ii) obstructs any entry to or exit from a building;
  - (iii) substantially obstructs pedestrians in their use of a sidewalk;
  - (iv) obstructs vehicular traffic;
  - (v) and in a manner by which it creates a traffic hazard;
  - (vi) 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;

- (vii) obstructs the visibility of a display window of business premises, and if the person carrying on business in that business premises objects thereto;
  - (viii) obstructs access to a pedestrian crossing;
  - (ix) obstructs access to a vehicle;
  - (x) obscures any road traffic sign;
  - (xi) obstructs access to an automatic teller machine;
  - (xii) limits access to parking or loading bays or other facilities for vehicular traffic;
  - (xiii) obstructs access to a pedestrian arcade or mall;
  - (xiv) obstructs the view of CCTV cameras; or
  - (xv) falls below the high water mark, unless a trading plan expressly provides for informal trading at that area;
- (f) on the half of a public road which is next to a building that is being used for residential purposes, if the owner or occupier of that building objects to the informal trading taking place at that location.

## **15. RESTRICTIONS ON INFORMAL TRADING**

No person shall:

- (a) obstruct access to any service of the municipality or municipal service works;
- (b) unless prior written approval is granted by the Municipality, at any public road, public path or any public place :-
  - (ii) stay overnight at the place where informal trading is conducted; or
  - (iii) erect any structure, other than as stipulated in the relevant trading area plan and/or permit conditions, for the purpose of providing shelter;
- (c) carry on business as an informal trader in a manner which:
  - (i) creates a nuisance;
  - (ii) damages or defaces the surface of any public road or public place or any other property belonging to the Municipality; or
  - (iii) creates a traffic hazard;
- (d) attach an object to any building, structure, pavement, footway, 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;

- (e) make a fire at any place or in circumstances where it could harm any person or damage a building or vehicle or any structure unless authorised to prepare foodstuffs by utilising open-flame fire or gas-fired equipment;
- (f) deliver or provide goods or equipment to an informal trader if that trader trades in contravention of this policy;
- (g) after having been requested to do so by any person carrying out an activity contemplated in section 8(g) who requires access to a facility or area, fail to remove or move any goods, or refuse to do so; and

## **16. WASTE REMOVAL, CLEANSING AND HYGIENE**

An informal trader must:

- (a) On a daily basis, collect all refuse or scrap or waster material produced while trading and deposit such material only in the refuse receptacles of a size and type approved by the Municipality;
- (b) maintain the informal trader's allocated informal trading site in a clean and sanitary condition:
  - (i) carry on business in a manner which does not cause a threat to public or public safety; and
  - (ii) at the request of an officer or duly authorised employee of the Municipality, move or remove any object so that the area or site from which informal trading is conducted may be cleaned.

## **17. SPECIAL EVENTS**

- (a) 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 area;

- (b) Any person who trades in a public road or public space and wants to erect a formal structure for purposes of trade must have written permission from the Municipality, approving the type of structure to be used, goods and services to be traded. Any exempted traders must apply to the Municipality, no later than two months after the adoption of this policy. If these traders continue to trade without permission from the Municipality, they shall be subject to Council approved sanctions.
- (c) 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.
- (d) The Municipality will process the application in consultation with other municipal 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 municipal 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 the designated department with their requirements and regulations that should be considered when allocating sites.
- (e) 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.
- (f) 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 recommend because there is a one month termination notice as security of tenure is not permitted in public spaces.

## **18. APPEALS**

- (a) 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. The Municipal Manager is the appeal authority.
- (b) The Municipal Manager as the final appeal authority, must constitute a panel (made up of not more than 3 persons) to process such appeals and make recommendations to the Municipal Manager on the resolution of the appeals.

## **19. ENFORCEMENT**

- (a) 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 municipal property.
- (b) Disciplinary and Appeal Procedures will be dealt with in a manner contemplated in the Municipal Systems Act; and the Municipality's By-Law on Street Trading
- (c) The enforcement of the provisions of this policy, including measures to address non-compliance will be done in accordance with the Municipality's By-Laws.

## **20. OFFENCES**

Any person who –

- (a) contravenes any provision of this policy or fails to comply with any condition imposed in terms hereof;
- (b) 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
- (c) deliberately furnishes false or misleading information to an officer or an employee of the Municipality; is guilty of an offence and liable on conviction to a fine in accordance with the Municipality's by-law.
- (d) Subletting, transferring, lending/borrowing a stall, or a trading permit to a third party commits an offence and liable on conviction to be evicted from a stall or trading permit revoked in accordance with the Municipality's by-law.

## **21. POWERS AND FUNCTIONS**

- (a) The Municipality Manager or his delegate shall be responsible for:
  - (i) all functions and decisions contemplated in this policy; and
  - (ii) the administration of this policy.
  
- (b) The Municipality Manager may delegate any of his powers and functions to an appropriate official with the power to sub-delegate in order to maximise administrative and operational efficiency.

## **22. REGULATIONS**

- (a). The Municipal Manager, by publication in the Provincial Gazette and with the approval of the Council, promulgate a by-law which gives effect to the provisions of this policy:
  - (i) regarding any matter which may or must be prescribed in terms of this policy,
  - (ii) conferring additional powers on or assigning additional duties to the Registrar or designated official in the local economic department of the Municipality,
  - (iii) 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;
  - (iv) regarding any other matter which it is necessary or expedient to prescribe for the proper implementation or administration of this policy.

## **23. TRANSITIONAL ARRANGEMENTS**

Notwithstanding the adoption of this Policy:

- (a). any declaration in terms of the Businesses Act 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;

- (b) where an informal trader had been issued with a lease or permit (prior to the adoption by Council of this policy) which permits trading from a particular bay, such lease or permit shall remain valid until an integrated permit system is adopted by the Municipality.

## **24. MONITORING, SUPPORT AND EVALUATION**

- (a) The Municipal Manager shall monitor and evaluate the implementation of this policy and ensure adequate support for the growth of the informal sector and the informal traders in particular by:
- (i) designating the head of Department of Local Economic Development to implement measures to support informal traders and provide quarterly reports on the implementation of this policy, and
  - (ii) appointing 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;
    - assist such informal traders in complying with the provisions of this policy and any such regulations;
    - generally to ensure informal traders are treated fairly and in accordance with the provisions of this policy,
    - act at all times with impartiality with 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.
- (b) 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:
- (i) is of different economic importance to the municipality
  - (ii) 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.

- (iii) presents different problems of control (e.g. hazardous chemicals in drum selling, the seasonality of mielie-cooking).
  - (iv) offers different possibilities for support, based on all of the above.
- (c) External sources can provide this sector support and play a number of creative roles in providing for example:
  - (i) Economically trained sector specialists for those sectors where large numbers of traders operate or where growth prospects are more positive.
  - (ii) Training in general business skills
  - (iii) Health education with regard to the handling of food for sale.
  - (iv) Legal advice about small business development
  - (v) Subsidisation of selected training providers
  - (vi) Co-operation with formal business.
  - (vii) Facilitation of access to financial services
- (d) 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.
- (e) 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.
- (f) Traders who opt to participate in any Incubation Programme may be required to discontinue their individual businesses in favour of joint efforts with colleagues.

## **22. REVIEW AND APPROVAL**

This Policy on Informal Trading shall be reviewed and approved by Council as and when required.