



## **INFORMAL TRADING BY-LAW**

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#### **1. Preamble**

WHEREAS in terms of the Constitution, the municipality is responsible for "trading regulations",

"markets", "street trading" and "beaches" within its area of jurisdiction. One of Cederberg Municipality's objects is to promote social and economic development.

WHEREAS Cederberg 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.

WHEREAS 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.

WHEREAS the municipality further acknowledges the need for a balanced relationship between the informal sector in order to promote social and economic development within a well-managed municipal area.

This by-law accordingly aims to:

- (i) consolidate in a single by-law, the by-laws passed by the predecessors in law of the Municipality of Cederberg; and
- (ii) govern informal trading activities within its area of jurisdiction.

## CHAPTER I

### INTERPRETATION AND FREEDOM OF TRADE

#### 2. Interpretation

In this by-law, words used in the masculine gender include the feminine, the singular includes the plural and vice versa. The English text prevails in the event of any inconsistency between the different texts and unless the context indicates otherwise—

**"authorised official"** means an official of the Council who is authorised to implement the provisions of this by-law;

**"beach"** means the portion of land above and contiguous to the seashore and includes any grass verge (where such verge exists);

**"beach trading"** means informal trading that takes place on a beach and includes trading on a parking area adjacent to the beach;

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

**"Council"** or "the Council" means the Council of the Cederberg Municipality as contemplated in section 118 of the Local

Government: Municipal Structures Act, No. 117 of 1998;

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

**"foodstuff"** "foodstuff" means any article or substance (except a drug as defined in the Drugs Control Act, 1965 (Act No. 101 of 1965)) ordinarily eaten or drunk by man 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;

**"garden or park"** means a garden or park to which the public has a right of access;

**"goods"** includes means any commodities, articles, vehicles and structures used or intended to be used in informal Trading;

**"historically disadvantaged individual"** means a South Africa citizen who—

- (a) is a black person;
- (b) is a woman; and/or
- (c) has a disability;

**"illegal goods"** means—

(a) goods that it is illegal to sell or to buy (including but not limited to counterfeit goods as defined in the Counterfeit Goods Act No. 37 of 1997);

(b) 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 in terms of this by-law, and, where applicable, the cost 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 this by-law;

**"informal trading zone"** means a zone adopted by the municipality to govern informal trading within a particular trading area;

**"intersection"** means an intersection as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

**"litter"** includes any container or other matter which has been discarded, abandoned or left behind by a person trading or his/her customers;

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

**"municipality"** means the Municipality of Cederberg established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, Provincial Notice 482 dated 22 September 2000 and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the Municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

**"municipal area"** the municipal area of Cederberg;

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

**"national heritage site"** means a place declared to be a national heritage site under the National Heritage Resources Act, 1999 (Act 25 of 1999);

**"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—

(a) a traffic officer appointed in terms of section 3A of the National Road Traffic Act No. 93 of 1996, as amended;

(b) a member of the South African Police Service;

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

(d) an employee, agent, representative and/or service provider of the municipality who are specifically authorised by the municipality in this regards;

**"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 or open space which:

(a) is vested in the municipality;

(b) the public has the right to use; or

(c) is shown on a general plan of a township filed in a Deeds Registry or a Surveyor-General's Office and has been provided for or reserved for the use of the public or even in such ownership.

"**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 the right of access and includes:

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of, connected with, or belonging to such road, street or thoroughfare.

"**seashore**" hold the same meaning as it is defines in the Sea Shore Act, No. 21 of 1935 as amended from time to time;

"**sidewalk**" means a sidewalk as defined in section 1 of the National Road Traffic Act, Act 93 of 1996, as amended;

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

"**Systems Act**" means the Local Government: Municipal System Act, No 32 of 2000;

"**trading area**" means an area in respect of which a trading plan has been adopted in terms of this by-law;

### 3. Types of informal trading

- (a) Informal trading may include, amongst others—
  - (i) street trading;
  - (ii) trading in pedestrian malls;

- (iii) trading at markets;
- (iv) trading at transport interchanges;
- (v) trading in public open spaces;
- (vi) mobile trading, such as from caravans, and light delivery vehicles;
- (vii) roving traders; and
- (viii) trading at special events.

(b) Beach trading includes—

- (i) trading from fixed trading bays;
- (ii) mobile trading, such as from caravans and light delivery vehicles;
- (iii) roving traders; and
- (iv) mobile and/or removable kiosks.

### 4. Freedom to engage in informal trading

Informal trading is permitted in any area within the jurisdiction of the municipality, subject to any trading zones adopted by the municipality, provisions of this by-law and any other applicable law.

### 5. Adoption of trading zones

(a) The municipality must, where appropriate, adopt trading zones, particularly in areas where there is a significant overlap between formal and informal trading. A trading zone may allow and regulate on non-municipal property, subject to the rights of the owners of such property.

(b) A trading zone must:

(i) define the geographic boundary of the trading area; and

(ii) demarcate informal trading bays market whether informal trading is permitted, outside of which informal trading shall be prohibited in that trading area.

(c) A trading zone may include any other matters governing informal trading in the relevant trading area, such as—

(i) prescribing any informal trading conditions, including such terms and conditions to be imposed in terms of permits to be issued by the municipality in terms of section 8 and subject to any requirements of this by-law;

(ii) the manner in which social and economic development will be promoted through the trading plan;

(iii) the manner in which sensitive heritage and environmental areas within the proposed trading area will be protected;

(iv) matter relating to a market which may be located within the relevant trading area, including, but not limited to:

(aa) the demarcation of the area within the trading area which constitutes a market;

(bb) where appropriate, the demarcation of trading bays within the market;

(cc) the legal arrangement between the municipality and any third party in respect of 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 of operations market;

- the management of informal traders operating within the market;

- ensuring that all relevant persons participate in appropriate decisions;

- providing guidance to the informal traders within the market with business support and development services; and

- any service, which is in addition to services provided by the municipality.

(d) A trading zone must comply with sections 11, 12 and 13 of this by-law and with any other applicable law.

(e) Any person shall be entitled to request that the municipality consider the adoption of a particular informal trading area; provided that where a proposed trader contemplates trading taking place on non-municipal property, the request is accompanied by the written consent of the owner of such non-municipal property. The municipality must consider and decide upon the request within a reasonable period.

(f) When considering a request for the adoption of a trading area, the municipality shall have due regards to any existing and proposed trading zones in the vicinity of the proposed trading area in order to determine the desirability of the adoption of an additional informal trading area.

## **6. Public participation in respect of the adoption of a trading zone**

### **Public Notice requesting comments and objections**

Before adopting a trading zone, the municipality is obliged to—

(a) consult with interested and affected role players including the informal and formal sectors with the view to compiling a draft trading zone map;

(b) compile draft trading zone maps following the consultation process in terms of section 6(a);

(c) publish notices in 2 (two) local daily newspapers that are circulated in the area in which the proposed trading zones is situated, 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, that—

(i) contains the key aspects of the draft trading zones and which notifies the public that the draft trading zone maps is available for inspection at a specified location; and

(ii) invites comments and objections from the public in relation to such draft trading zone maps, to be received by the municipality within 30 (thirty) days from the date of publication of the notice.

### **Public Meeting**

(d) In the notice referred to in section 6(c), the municipality must invite interested and affected parties to a public meeting.

(e) 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 zone 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 comment and objections must be recorded.

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

(f) The municipality must consider all objections or comments that the municipality may receive pursuant to the process outlined in this section.

(g) 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 zone, notwithstanding the provisions of any other law, and at a meeting of the Council—

(i) adopt the draft trading zone;

(ii) amend and adopt the draft trading zone; or

(iii) reject the draft trading zone.

(h) Notwithstanding the provision of section 59 of the Systems Act, the Council may not delegate the decision-making powers referred to in section 6(g).

(i) In the event that the municipality adopts a draft trading zone, a notice must be published in (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 zone has been adopted as a trading zone;

(ii) of the key aspects of the trading zone including the date upon which it shall become effective; and

(iii) that the trading zone map is available for inspection at a specified location.

## 7. Amendment, revocation and review of trading plans

The municipality—

(a) may amend or revoke an adopted trading zone, provided that:

(i) if the amendment deviates materially from the trading zone, the municipality must comply with section 6 with the necessary changes required by the context, provided further that where persons are adversely affected by a proposed amendment that does not require compliance with section 6, such persons will be afforded their just administrative rights; or

(ii) in the case of revocation, the municipality shall afford all affected persons their administrative justice rights.

(b) The municipality must review trading zones from time to time as the Municipality deems fit.

## 8. Permits

(a) No person may conduct informal trading on municipal property in a trading area without a valid permit from the municipality.

(b) The municipality is entitled to charge a permit-holder:

(i) a trading fee;

(ii) an application fee; and

(iii) 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.

(c) In the event that a person qualifies for a permit, but has motivated in writing the inability to pay

the fee contemplated in section 8(b) and has provided sufficient proof thereof to the reasonable satisfaction of the municipality, the municipality may waive the fee in whole or in part.

(d) In order to qualify for a permit, the applicant—

(i) must be an informal trader;

(ii) may not already hold a permit in respect of the trading area in respect of which a permit is being applied;

(iii) must be a South African citizen, failing which, must be in possession of a valid work permit which includes, but is not limited to, a refugee permits; and

(iv) must not employ and actively utilise the services of more than 20 (twenty) persons.

(e) The municipality must take into account the following factors when considering an application for a permit—

(i) the applicant's ability to meet the trading hours for the relevant trading area as the municipality may determine;

(ii) the need to give preference to applicants that are historically disadvantaged individuals;

(iii) where there are a limited number of trading bays available in the trading area in respect of which a permit is sought, the need to give preference to applicants that would be new entrants to informal trading within the municipality;

(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;

(vii) whether the applicant has, in terms of this by-law, been convicted of an offence and/or had a permit revoked or suspended;

(viii) whether the applicant is a suitable person to carry on the lawful business at the allocated site, whether by reason of his character, having regards to any conviction recorded against him, or his previous conduct for any reason;

(ix) where trading plans are adopted in areas previously not subjected to such plans, the need to give preference to applicant who have an established informal trading operation in the location for which a new trading area is adopted.

(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 zone, including but not limited to the right to—

(i) specify the:

- trading hours during which the permit-holder may trade;

- nature of goods or services the permit-holder is permitted to trade; and

- permit-holder's trading bay number;

(ii) allocate the informal trader an alternative bay in the same trading area;

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

(iv) impound trading goods in terms of section 19(b) or section 19(h) in the event of a contravention of any provision of this by-law or any other law;

(v) suspend a permit for a special event on reasonable prior notice where practicable to the informal trader, with no compensation payable to the informal trader, notwithstanding that informal trading may be permitted by the municipality at the special event in terms of this by-law;

(vi) on reasonable prior notice 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/or the by-law or any other law;

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

- wilfully supplying incorrect information when required to provide the municipality with information; or

- being found to be unsuitable as contemplated in section 8(e)(viii) with the necessary changes required by the context.

(g) Notwithstanding the contents of the relevant trading zone, 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 8(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.

## 9. Transfer 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 dependant under undue or severe economic hardship.

(b) A permit may be temporarily transferred, with the written approval of the municipality, to a dependant or, where there is no dependent, to an individual nominated by the permit holder, where the permit-holder—

(i) is incapable of trading because of an illness, provided that:

(aa) proof from a medical practitioner is provided to the municipality which certifies that

the permit-holder is unable to trade; and

(bb) the dependant or assistant is only permitted to replace the permit-holder for the period stipulated by the medical practitioner in the certificate for which the permit holder will be incapable of trading;

(ii) has to be absent for an extended period in order to fulfil religious or cultural duties, provided that where the validity of the permit extends beyond 1 (one) month, unless the municipality consents to a long period in exceptional circumstances.

(c) Subject to section 9(b), a permit-holder may not transfer a permit to any other person in any manner, including but not limited to, by the way of lease or sale.

(d) A permit must immediately be returned to the municipality should the municipality revoke such permit in the event of the permit-holder—

(i) being refused permission to transfer the permit and the permit-holder failing to resume trading; and

(ii) no longer wishing to trade as an informal trader from the relevant trading bay.

An owner of non-municipal property, which has been demarcated in a trading zone as land where informal trading is permitted, must—

(a) ensure that all informal trading that takes place on the owner's property complies with the applicable trading plan and this by-law;

(b) permit any officer access to the owner's property to enforce the provisions of this by-law;

(c) ensure, at the owner's cost, that sufficient services are provided to maintain acceptable hygienic

conditions in respect of the informal trading;

(d) ensure that trading from formal business premises do not encroach upon the property of another property owner.

## CHAPTER II

### GENERAL SUPERVISION AND CONTROL

#### 11. 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 zone;

(b) on a verge or sidewalk 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—

(aa) duly considered any relevant trading zone activities; and

(bb) consulted with the relevant property owner and, where relevant, the tenant of such property;

(ii) a place of worship such as a church, synagogue or mosque unless a trading zone permits informal trading at that area; or

(iii) a national monument as determined in accordance with the provisions of the

National Heritage Resources Act, 25 of 199, as amended;

(c) at a place where it—

(i) obstruct 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) obstruct 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 zone expressly provides for informal trading at that area;

(d) 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.

## 12. Restrictions on informal trading

No person shall:

(a) obstruct access to any services of the municipality or municipal service works;

(b) unless prior written approval is granted by the municipality, at any public road or public place—

(i) stay overnight at the place where informal trading is conducted; or

(ii) erect any structure, other than 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, 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 referred to in section 12(d), 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 by-law;

(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

(h) if permitted to conduct beach trading:

(i) sell or promote alcoholic products;

(ii) use bells, hooters, amplified equipment or similar devices, which emit sound, in order to attract customers; or

(iii) use any electrical supply or power generator, unless expressly approved and provided for in the relevant permit.

## 13. Waste removal, cleansing and hygiene

(a) Informal traders must—

(i) maintain the informal trader's allocated informal trading site in a clean and sanitary condition;

(ii) on a daily basis and at the conclusion of trading, collect and remove from any public road or public place all waste, packaging material, stock and equipment that are utilised in connection with or produces by the informal trader's business, unless the municipality grants a written exemption in this regard;

(iii) carry on business in a manner which does not cause a threat to public health or public safety; and

(iv) 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.

(b) Failure to comply with the provisions of this section or the lawful request of an officer in terms of this section, will be regarded as a contravention of the by-law and the informal trader shall be

subject to the enforcement provisions of this by-law.

#### **14. Charges**

18. the council shall from time to time fix charges payable to it for the letting of stands or stalls in demarcated areas under its control from where carrying on of the business of street trader is permissible.

#### **15. Special events**

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.

#### **16. Guidelines and policies**

The municipality may at any time publish or amend guidelines or policies in respect of informal trading in the municipal area.

#### **17. Powers and functions**

(a) Subject to section 16(c), the Municipal Manager shall be responsible for:

(i) all functions and decisions contemplated in this by-law; and

(ii) the administration of this by-law.

(b) The Municipal 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.

(c) The decisions contemplated in sections 6(h), 7(a)(i) and 7(a)(ii) must be taken by Council and may not be delegated.

#### **18. Limitation of liability**

Any informal trader does so at his or her own risk and the municipality is not liable for any damage or loss caused by the exercise or failure to exercise any power or the performance of any duty in good faith under this by-law.

#### **19. Appeals**

(1) Any person who feels himself aggrieved by a decision of the municipality may appeal against the decision to an Appeal Committee in accordance with the provisions set out herein.

(2) Any person who feels himself aggrieved by a decision of the municipality shall notify the municipality of his/her intention to appeal against the decision in writing within 10 days of having received notification of the municipality's decision.

(3) The Chairperson shall notify the aggrieved person of the date, time and place of the meeting of the Appeal Committee at which his/her presence is required within 10 days of receipt of notice of appeal.

(4) The aggrieved person who has received notice in terms of clause 18(3) shall personally appear at the meeting or appoint a legal representative or any other person to appear on his/her behalf.

## **20. Constitution of Appeal Committee**

(1) The Member of the Executive Council responsible for Economic Affairs may, with the concurrence of the municipality, representatives of the street traders and any other interested person, designate persons as members of the Appeal Committee.

(2) The Appeal Committee shall consist of a maximum of six members with at least two members from the relevant sector.

(3) The members of the Appeal Committee shall appoint members to act as a chairperson and deputy chairperson respectively.

(4) When the chairperson is unable to perform the function of chairperson, the deputy chairperson shall perform the function of chairperson.

(5) If the chairperson is of the opinion that a particular person is able to assist the Appeal Committee, he/she may co-opt that person for that purpose.

(6) A person so co-opted shall not be entitled to vote at any meeting of the Committee.

## **21. Procedure at Appeal Meetings**

21. (1) The chairperson shall determine the procedure at the meeting.

(2) All members shall be present at the meeting of the Appeal Committee.

(3) Any person present at the meeting may—

(a) be called upon by the chairperson to give evidence, (b) be called upon by the chairperson to produce to the

Committee any document or any other property which is in his/her possession or under his/her control, or

(c) be questioned by the committee on the matter before it.

(4) The Appeal Committee shall review the decision of the municipality and make a finding having regard to the following considerations—

(a) whether the decision of the municipality was fair and equitable in the circumstances;

(b) the effect of the decision on the ability of the aggrieved person to trade, and

(c) whether alternative measures may be adopted to facilitate the continued business of the aggrieved person.

(5) A decision of the Committee shall be taken by a majority of votes of the members present at the meeting and in the event of an equality of votes, the chairperson shall have a casting vote in addition to his/her deliberate vote.

(6) The Appeal Committee may after consideration by it of the evidence presented—

(a) refuse the Appeal;

(b) uphold the Appeal, or

(c) take such other steps as it may think fit.

(7) The Appeal Committee shall as soon as it is practicable—

(a) notify the aggrieved person of its decision in writing, and

(b) furnish the aggrieved person with written reasons for its decision.

## 22. Enforcement

(a) An officer may issue a person with a written warning if, in the opinion of the officer, that person has traded in goods or provided services in contravention of this by-law or that person has contravened this by-law in any other manner, including but not limited to, in violation of a permit condition, or any other applicable law.

(b) In the event of a person continuing or repeating a contravention in respect of which a written warning has already been issued to that person, then an officer may 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, in which case the officer must—

(i) complete a full inventory of all the property that has been impounded and such inventory must include information on the consequences of such impoundment should the person fail to pay the impoundment costs and collect the goods;

(ii) provide the person with a copy of the inventory; and

(iii) immediately store the impounded property in an area designated by the municipality for the storage of impounded property.

(c) Property which has been impounded from a person may be released after the presentation by the person of the inventory contemplated in section 19(b) and the payment of the impoundment costs, provided that the municipality is reasonably satisfied that the relevant person will not, upon the release of the property, continue to commit any contravention which led to the goods being impounded; provided further that, where the municipality is not so satisfied, it may withhold the

goods for up to 30 (thirty) days after payment of any fine and/or impoundment costs.

(d) Perishable goods that have been impounded may, at any time after the impoundment, be sold or otherwise disposed of by the municipality, the municipality may destroy the goods if the condition of those goods renders them unfit for human consumption.

(e) Impounded property other than perishable goods, may be sold by the municipality if the owner does not, or is unable to, pay the impoundment costs within 1 (one) month from the date of impoundment of that property.

(f) In the event of the impounded property being sold by the municipality in terms of sections 19(d) or 19(e), and upon the presentation of the inventory as contemplated in section 19(b) by the owner, the municipality must pay to that owner—

(i) the proceeds of the sale less the impoundment costs; or

(ii) if the owner has previously paid the impoundment costs, the proceeds must be paid to the owner free of any such deduction.

(g) If the owner does not claim the proceeds derived from the sale of the

impounded goods within 3 (three) months from the date of impoundment, then the proceeds will be forfeited to the municipality.

(h) If in the reasonable opinion of an officer, an informal trader is suspected of trading in illegal goods or that a supplier as contemplated in section 12(f) is supplying the trader with illegal goods, then such goods may be immediately confiscated. In the event of such a confiscation, the officer must:

- (i) complete a full inventory of all the property that has been confiscated;
- (ii) provide the informal trader or person contemplated in section 12(f) with a copy of the inventory; and
- (iii) immediately surrender the suspected illegal goods to the possession of the South African Police Service.

### **23. Offences**

Any person who—

- (a) contravenes any provision of this by-law 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 by-law; 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 not exceeding R5,000 (Five thousand Rand) or to

imprisonment for a period not exceeding 3 (three) months, subject to the Adjustment of Fines Act, No 101 of 1991.

### **24. Presumptions**

In any prosecution of an offence under this by-law, an allegation in the charge concerned that—

- (a) any goods with which a business was carried on were or were not of a particular kind, class, type or description;
- (b) any goods or services were sold;
- (c) any place is situated in a public road or public place or within a particular area;
- (d) any person carried on the business of street trading and in a manner and place alleged;
- (e) any sign, marking or device which indicates a restriction or prohibition contained in any relevant provision contained in Chapter V or VI of this by-law was displayed in the manner prescribed in section 16(b), shall be presumed to be correct unless the contrary is proved.

### **25. Vicarious liability of persons carrying on business**

When an employee of a person conducting the business of street trading performs or omits to perform any act which would be an offence in terms of this by-law for that person to perform or omit to perform, that person shall be deemed himself to have performed or omitted to perform the act, unless he satisfies the court that—

(a) he or she neither connived at nor permitted the act or omission by the employee concerned,

(b) he/she took all reasonable steps to prevent the act or omission; and

(c) an act or omission, whether lawful or unlawful, of the nature charged on no condition or under no circumstances fell within the scope of the authority or employment of the employee concerned, and the fact that the said person issued instructions whereby an act or omission of that nature is prohibited shall not in itself be sufficient proof that he took all reasonable steps to prevent the act or omission.

## **26. Vicarious responsibility of employees**

When a person carrying on the business of street trading is by virtue of section 22 liable for an act or omission by an employee of that person, that employee shall also be liable therefore as if he were the person carrying on the business concerned.

## **27. Transitional provisions**

Notwithstanding the enactment of this by-law;

(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, pedlar 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 by-law;

(b) where an informal trader had been issued with a lease or permit prior to the enactment of this bylaw which permits trading from a particular bay, such lease or permit shall remain valid until an integrated permit system is adopted by the municipality which complies with the permit system as contemplated in this by-law.

## **28. Repeal of by-laws**

The provisions of any by-law previously promulgated by the municipality or the previously disestablished

municipalities are hereby repealed in so far as they relate to matters provided for in this by-law, and

insofar as it has been applicable to the municipality by the authorization for the execution of powers and

functions in terms of section 84(3) of the Municipal Structures Act, Act 117 of 1998.

## **29. Short title and commencement**

This by-law is called the Cederberg Municipality Informal Trading By-law and takes effect on the date of publication in the Western Cape Provincial Gazette