

**CITY OF PORT ELIZABETH**

**BY-LAW RELATING TO STREET TRADING**

**1. DEFINITIONS**

In this By-law any word or expression to which a meaning has been assigned in the Businesses Act, 1991 (Act 71 of 1991), shall have such meaning, and unless the context indicates otherwise:

- (i) "Act" means the Businesses Act, 1991 (Act 71 of 1991);
- (ii) "authorised officer" means:
  - (a) a traffic officer appointed under Section 3 of the Road Traffic Act, 1989 (Act 29 of 1989); or
  - (b) a peace officer as contemplated in Section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977);
- (iii) "business", in relation to any park or public road, means any act of selling or supplying goods coupled with the intention, at the time of such selling or supplying, to continue such activity;
- (iv) "carry on a business" means to display goods for sale by inviting others to come and buy the goods so displayed;
- (v) "contiguous" for the purposes of Section 2(e) shall mean within 50 m of the building in which the business is being carried on;
- (vi) "Council" means the City Council of the Municipality of the City of Port Elizabeth;
- (vii) "goods" means any movables displayed in a street by any person for the purpose of carrying on a business, and this includes any article, receptacle, vehicle or movable structure;
- (viii) "lease" means a lease agreement as contemplated in Section 3(2)(a);
- (ix) "municipality" means the area that falls under the jurisdiction of the Council;
- (x) "park" includes any square or other open or enclosed space to which the general public has right of access;
- (xi) "public road" means any road, street, thoroughfare, bridge, overhead bridge, subway, foot pavement, footpath, sidewalk and lane vested in the Council by operation of law;
- (xii) "service" means the performance on a public road or in a park of any act for gain or reward;
- (xiii) "sidewalk" means that portion of a verge intended for the exclusive use of pedestrians;
- (xiv) "stand" means a stand on a sidewalk set apart and demarcated by the Council as contemplated in Section 6A(3)(b) of the Act;

- (xv) "street vendor" means a person carrying on business, and includes a person to whom a stand has been leased or allocated in terms of Section 3 for as long as the person is carrying on the business of a street vendor on it;
- (xvi) "**substantially obstruct**" for the purposes of Section 2(III)(d) shall mean to **cause an obstruction that does not leave at least 1,8 m of the sidewalk free for use by pedestrians**;
- (xvii) "verge" means a verge as defined in Section 1 of the Road Traffic Act, 1989 (Act 29 of 1989).

## 2. PROHIBITION ON CARRYING ON BUSINESS

No person shall in the Municipality carry on the business of a street vendor:

- (a) in a garden or park **save with the prior written permission of the Council**;
- (b) on a verge contiguous to:
  - (i) a building belonging to or occupied solely by the State or the Council;
  - (ii) a church or other place of worship; or
  - (iii) a building declared a national monument in terms of the National Monuments Act, 1969 (Act 38 of 1969);
- (c) in an area declared by the Council as a prohibited area in terms of Section 6A(2) of the Act, excluding a stand leased by virtue of a lease agreement as contemplated in Section 3;
- (d) at a place where:
  - (i) it causes an obstruction in front of a fire hydrant or an entrance to or exit from a building;
  - (ii) it causes an obstruction to vehicular traffic; or
  - (iii) it substantially obstructs pedestrians in their use of a sidewalk as defined in Section 1 of the Road Traffic Act, 1989 (Act 29 of 1989); and
- (e) on a verge so defined contiguous to a building in which business is being carried on by any person who sells goods of the same nature as or of a similar nature to goods being sold by the street vendor, pedlar or hawker concerned, without the **prior written consent** of that person;
- (f) on that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects to it;
- (g) within ten meters (10 m) of the entrance to a financial institution or electronic banking facility;
- (h) within **one comma eight meters (1,8 m)** of a shop window used to display goods **save with the prior written permission of the lawful occupier of the shop**;

### 3. LEASING OF STANDS

- (1) Any person who intends to carry on a business as contemplated in Section 2(c) shall, on a form prescribed by Council from time to time, apply to the Council for the lease or allocation of a stand.
- (2) If such application is successful:
  - (a) the applicant shall, in respect of such stand, enter into a lease agreement with the Council at such rental as prescribed by Council;
  - (b) a token shall be issued to the applicant (hereinafter referred to as the "street vendor") as proof of the person's right to occupy such stand for the purpose of carrying on business as contemplated in Section 2(c);
  - (c) street vendors shall, while carrying on business on the stand, retain such tokens on their persons ready for production to any authorised officer who calls for them; and
  - (d) the Council may, at the written request of the street vendor, issue a token to one bona fide employee of the street vendor, and the provisions of subsection (c) shall be applicable to such employee mutatis mutandis.
- (3) A person who carries on the business of a street vendor on a stand and who is unable to produce a token, as contemplated in subsection 2(b), shall be guilty of an offence.

### 4. OFFENCES

- (1) A street vendor who:
  - (a) places or stacks goods on a stand in such a manner that they constitute a danger to any other person or are likely to injure any person or damage any other goods or property;
  - (b) attaches any goods by any means to any building, structure, pavement, tree, parking meter, lamp pole, electricity pole, telephone booth, post box, traffic sign or bench;
  - (c) makes a fire on or near any stand;
  - (d) stores goods in a manhole or stormwater drain;
  - (e) disposes of any litter in a manhole, stormwater drain or any other place not intended for the disposal thereof; or
  - (f) **makes use of a structure which will probably or in fact be dangerous to life or property or will probably or in fact be unsightly or objectionable;**
  - (g) contravenes any provision of these By-laws or fails to comply herewith or with any other conditions imposed in terms of these By-laws,

shall be guilty of an offence.

- (2) A street vendor who fails to:
- (a) keep his/her stand, including any goods used by him/her in carrying on a business, in a hygienic and neat condition;
  - (b) take all reasonably necessary precautions to prevent spilling any litter, including fat, oil and grease, on to a public road;
  - (c) arrange or move his/her goods at the request of an authorised office or a person whose lawful duties include the tendering of or is related to the supply of essential public services, so as to permit or facilitate the carrying out of such service; or
  - (d) **remove his/her goods from his/her place of business overnight between the hours of 19:00 and 07:00,**

shall be guilty of an offence.

## 5. IMPOUNDMENT AND REMOVAL

- (1) An authorised officer may impound and remove any goods:
- (a) which, on reasonable grounds, he/she suspects are being used or are intended to be used or have already been used in connection with the carrying on of the business of a street vendor; or
  - (b) which he/she finds in a park or on a public road and which, in his/her opinion, constitutes an infringement of these By-laws, whether or not such goods are in the possession of or under the control of any person at the time of such impoundment and removal.
- (2) (a) An authorised officer acting by virtue of subsection (1) shall issue a receipt to the person who appears to be in control of the goods concerned.
- (b) Any goods as contemplated in subsection (a) shall be marked in a suitable manner and kept in safe custody pending the institution of criminal proceedings.

## 6.1 PENALTIES

A person who contravenes or fails to comply with any provision of these By-laws shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding five thousand rands (R5 000,00) or imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment and, in the case of a continuing offence, to an additional fine not exceeding two hundred rands (R200,00) or additional imprisonment for a period not exceeding ten days or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued.

- 6.2 Any person who continues to commit an offence after notice has been served on him to cease committing or after he has been convicted of such offence shall be guilty of a continuing offence.

Council is channelling its input through the MUAA at present and needs to consider whether it should not also initiate and/or support input into the process through the Eastern Cape Local Government Association.

The process is so far progressed that the end of this month appears to be the deadline for input and the MUAA accordingly intends co-ordinating and combining the input of its members for submission to government during the course of next week.

This is in all likelihood the last opportunity the Committee will have to influence the process and members and Councillors generally are invited on the basis of an interactive session to develop positions to input through the MUAA and/or Eastern Cape Local Government Association.

All Councillors have been specifically invited to participate in this item which for that purpose has been scheduled for attention after the one on Metropolitanisation.

#### 4. STREET TRADING BY-LAW (175/12)

On 28 August 1992 the Administrator of the Cape Province promulgated Regulations Relating to Street Vendors, Pedlars or Hawkers in terms of Section 6(1) of the Businesses Act, 1991 (PN 404/1992). These regulations are applicable in the area of jurisdiction of every local authority situated in the Province of the Cape of Good Hope unless a local authority opts to adopt its own by-law which is what is proposed in this report. The above regulations replaced the Council's previous Hawkers By-law which prohibited the carrying on of business of a hawker in certain streets within the Port Elizabeth municipal area. The promulgation of the regulations mentioned above, resulted in the Council's right to declare certain areas restricted or prohibited being forfeited and has led to the unorganised state of affairs in the city. Street traders occupy basically every street and sidewalk within the major business areas of the city. This has led to numerous complaints being received from ratepayers, civic organisations, organised business and also Councillors.

Various appeals were made not only from Port Elizabeth but across the country to the relevant State department regarding the leniency of the Business Act and the Regulations Relating to Street Vendors, Pedlars or Hawkers. On 19 May 1994 the Director-General, Community Services Branch of the Cape Provincial Administration notified all local authorities of the promulgation of the Businesses Amendment Act, 1993 (Act 186 of 1993) in the Government Gazette No. 15374 dated 29 December 1993. These amendments to the Businesses Act, 1991 were made as it became clear that it was not possible to deal adequately with the business of street vendor in terms of the existing statutory provisions. The Amendment Act contains amendments aimed at rectifying this state of affairs.

One of the issues that the Amendment Act addresses is that the Regulations Relating to Street Vendors, Pedlars or Hawkers will remain in force in the area of jurisdiction of a local authority until they are amended or repealed by the local authority concerned. The regulations in question have proved to be unsuccessful as a deterrent against offending street traders. A local authority is virtually left toothless, as the regulations grossly favour street traders and leaves a local authority with little legal clout to act against erring street traders.

A new Section 6A has been included in the Businesses Amendment Act whereby the power to make regulations relating to street traders is taken away from the Premier and the power to make by-laws on this matter is vested in local authorities subject to certain conditions and the approval of the Premier. One of the most important aspects of the Act is that a local authority may by resolution in terms of Section 6(A)(2) of the said Act declare any area within its area of jurisdiction to be an area in which the carrying on of the business of street trader may be restricted or prohibited. For a local authority to declare an area prohibited or restricted, a number of provisions needs to be fulfilled which are dealt with at a later stage in this report.

A draft set of by-laws has been compiled aimed at promoting orderly hawking in the following areas: Main Street between the Eric Tindale Building and the City Hall; Main Street between Albany Road and Bagshaw Street; Rink Street; Korsten (Mercantile Centre, Cottrell Street, Durban Road and Standford Road); Cape Road, Newton Park, between 3rd and 5th Avenue; Primrose Square, Linton Grange; Cleary Park Shopping Centre; Njoli Square, Kwazakhele. **A copy of the draft by-law is attached hereto marked Annexure 'B'.**

Input on the ramifications of the proposed by-law has been invited and in most instances obtained from a number of roleplayers in the formal sector including: The Chamber of Commerce, the ANC Women's League, the Department of Justice, Sanlam Properties, the Islamic Association, CATCHIB (the Cape Council for Hawkers or Informal Business), PMTOF (a central body for taxis), the office of the Premier, the South African Police Services and the Central Executive of the Ratepayers Association.

All these groups agree that there is a need for order, that hawking should be from demarcated stands, that acceptable standards regarding hygiene and cleanliness should be maintained, that pedestrians should not be hindered in using the pavements, that the rights of existing businesses and their entrances should be respected and that the security of the public was vital.

Following this, a questionnaire was sent to interested parties asking for comment on the following:

- (i) whether there should be areas where street trading should not be allowed;
- (ii) whether street trading should be permitted in all public gardens and public parks;
- (iii) whether there were areas in Port Elizabeth where street trading should only be allowed from demarcated stands leased from the Municipality;
- (iv) whether Main Street between the Market Square and Russell Road Interchange is an area in Port Elizabeth where street trading should be allowed only from a demarcated stand leased from the Municipality;
- (v) where trading from demarcated stands should apply;
- (vi) whether street trading should not be allowed at a place where it substantially obstructs pedestrians in the use of the sidewalk;
- (vii) whether street trading should not be allowed on a verge contiguous to a building in which business is being carried on by a person who sells goods of the same nature or of a similar nature to goods being sold by a street vendor, without the consent of that person i.e. the person in the building must consent;
- (viii) whether street vendors should conduct their business with due regard to public health; and
- (ix) safety;
- (x) whether street vendors should be conducted with due regard to maintaining standards of general neatness;
- (xi) whether street vendors should conduct their business with due regard to the creation of a positive image for the city taking into account the fact that the citizens of Port Elizabeth are proud of the city as an important tourist destination.

The questionnaire with a draft of the proposed by-law was sent to the Chamber of Commerce, ANC Women's League, the Senior Public Prosecutor in Port Elizabeth, Sanlam Properties, Councillor Stevenson, Councillor Potgieter, Councillor Naran, PERCII and ABSA Bank. The inputs from the questionnaires and comments on the proposed by-law was discussed at a meeting held on 23 January 1996 at the City Hall.

*and no<sup>v</sup> to CATCHIB / Islamic Association / PMTOF !!!*

A synopsis of responses to the circular is as follows (based on the categories of most important, more important, important and not important).

The following important points came out of the meeting:

- (i) the conducting of a business should include the display of items only;
- (ii) the lack of toilet facilities for street traders is an important matter needing attention;
- (iii) measurable criteria are needed to decide when a sidewalk is being obstructed;
- (iv) there must be a clear distinction between a verge and a sidewalk;
- (v) the position of street collections needs clarification;
- (vi) clear criteria are needed to decide when a street vendor is contiguous to an existing business;
- (vii) security is very important and there should be no trading near automatic teller machines;
- (viii) it is important that there be no trading within a specific distance from shop windows;
- (ix) problems that might arise because certain business buildings have a residential component must be anticipated and dealt with;
- (x) there must not be any stopping overnight;
- (xi) a point of major concern is that the majority of street traders are not trading for their own account but are representatives of outside businesses;
- (xii) there should be control over the types of structures permitted;
- (xiii) the rights of UBUNTU to half of the Market Square precludes the possibility of using that half for street traders.

A summary of the input from the questionnaire is as follows:

- (a) Street trading should not be allowed in front of financial institutions and electronic banking halls, as crowds create unsafe areas and opportunity for robbery. Street trading should not be allowed where there is severe congestion or where it affects the visibility of road users. Street trading should be from demarcated areas only.
- (b) Controlled trading in public gardens and parks should be considered and in appropriate circumstances allowed. The rights of all users of parks should be considered.
- (c) Street trading should only be permitted from demarcated sites especially in areas where street trading hampers pedestrian traffic.
- (d) It is most important that street trading in Main Street between the Market Square and Russell Road be permitted only from demarcated sites leased from the Municipality. This is essential to protect the rights of existing business and the rights of the general public to use the pavements.

- (e) Street trading should not be allowed on a verge contiguous to a building in which business is being carried on by a person who sells goods of the same nature or of a similar nature to the goods being sold by the street vendor, without the consent of the person in the building. This is to protect existing business, which have high overheads (including rates and rental) from unfair competition.
- (f) The keeping of acceptable health standards is essential. Regular health inspections should be held.
- (g) There is a need for more facilities in areas where there is street trading especially toilets, running water and refuse removal. Street trading should bring life, vibrancy and colour to the city. It should contribute, not detract.
- (h) The concept of "one trader one site" should be enforced. The obscuring of shop windows by traders should not be allowed.

The next step in the consultation process was to convene a meeting of street vendors, pedlars or hawkers for purposes of negotiation in order to comply with Section 6A(2)(c) of the Business Act, No. 71 of 1991, which makes such negotiation a legal obligation. A public notice convening a meeting was published in the press. In addition, many street traders were given personal invitations to the meeting.

Altogether three meetings were held i.e. at the Norris Singaphi Hall (Kwazakhele), Auditorium (City Hall) and at the Gelvandale stadium.

The purpose of the meetings was to discuss hawking in the areas referred to above and especially the fact that a possible course of action for Council will be to declare all or some of the areas as an area in which the carrying on of the business of street vendor, pedlar or hawker is restricted, save from specific stands set aside by Council.

In view of this possibility, and in order to comply with Section 6A(2)(c)(i) and (ii) of the Business Act, No. 71 of 1991, those interested parties at the meeting were asked for input on whether they thought that more effective supervision and control would make such a declaration unnecessary, and whether they thought that such a restriction or prohibition would drive out of business a substantial number of street vendors, pedlars or hawkers.

The participants were asked for input on the concept of hawking only from specific stands and the basis of how stands should be allocated. Further, comments on the advertised questions were invited with specific reference to the areas referred to in the opening paragraph of this item.

Input was varied and boiled down to the following:

- (a) In principle street trading should be from demarcated sites only. This applies definitely to Main Street between Russell Road and the Market Square and could usefully be applied in Njoli Square.
- (b) Demarcated sites should be leased from the Municipality for a nominal sum.
- (c) The basis of site allocation should be that the street traders who have been on site longest should be given preference.
- (d) Street traders who are representatives of existing businesses should not be allocated sites before genuine "own business" street traders.



**IT IS RECOMMENDED:**

- (a) That the Council, by SPECIAL RESOLUTION, taken in terms of Section 188 of the Municipal Ordinance, 1974, adopt the proposed By-law Relating to Street Trading attached as Annexure "B" hereto.
- (b) That the declaration by the Council of certain areas in the city as areas in which the carrying on of the business of street vendor, pedlar or hawker is restricted, save from specific stands set aside by the Council as well as the rental payable for the lease/allocation of such stands be the subject of a further report.

**5. HELENVALE UPGRADING - AMENDMENT TO THE 1996/97 CAPITAL BUDGET (223/215)**

A grant of R1 500 000,00 to finance the following projects, initially identified as forming the Helenvale upgrading programme, was approved by the former Administration : House of Representatives on 6 December 1993 and allocated on 1 February 1994:

- 1(a) Provision of sports complex/fencing
- (b) Ablution block and change-rooms
- 2. Upgrading of sidewalks
- 3. Upgrading of playlots
- 4. Upgrading of public lighting
- 5. General clean-up of township
- 6. Furniture and equipment for resource centre
- 7. Social survey

The upgrading programme was delayed mainly due to friction between the leadership within community structures as well as the unrest situation at the time, with the result that no provision was made for the inclusion of the aforementioned upgrading projects on the 1996/97 Capital Budget.

The Mayor's personal involvement in the Helenvale upgrading project, as far back as November 1994, has resulted in a renewed interest and a willingness on the part of the community to work together. There is therefore an urgent need to vigorously continue with the upgrading programme.

To date three of the original projects have been completed, one has been partially completed and three have not been commenced with at all.

The unspent balance of the grant in respect of the projects not yet commenced with, identified in accordance with the original allocation of R1 500 000,00 is as follows:

(a)	<u>Projects not yet commenced with</u>	
(i)	Clean-up campaign	R 53 485,00
(ii)	Furniture and equipment for the Resources Centre (to be administered by the Director : Administration)	R 40 000,00
(iii)	Helenvale social survey	R 10 000,00