

Street Trading

KWADUKUZA MUNICIPALITY

BYLAWS RELATING TO STREET TRADING

The Kwadukuza Municipality acting in terms of section 156(2) of the Constitution of the Republic of South Africa Act 1996, (Act 108 of 1996) read with section 13 of the Local Government Municipal Systems Act (Act 32 of 2000) hereby publishes the bylaws as set forth hereafter as bylaws made by the Municipality which bylaws will come into effect on the first day of the month following the date of publication hereof.

1. Definitions

(1) In these bylaws, except as otherwise expressly provided or unless the context requires –

“approval” means approval by the authorised official and “approve” has a corresponding meaning;

“authorised official” means an official of the municipality to whom it has delegated a duty, function or power under these bylaws, in relation to the exercise or performance of that duty, function or power and includes any employee acting under the control and direction of such official;

“litter” includes any receptacle, container or other object or matter discarded or abandoned by a trader or his customers or left behind by him or them;

“municipal service” means any system conducted by or on behalf of a Municipality for the collection, conveyance, treatment or disposal of refuse, sewage or storm water or for the generation impounding, storage, purification or supply of water, gas or electricity;

“municipal service works” means all property or works of whatsoever nature necessary or desirable for or incidental to any municipal service;

“Municipality” shall mean the KwaDukuza Municipal Council and includes the Mayor, Political Office Bearers, Political structures, Municipal Manager and any official who has delegated powers in terms of Section 59 of the Local Government Municipal Systems Act (Act 32 of 3000).

“prescribed” means prescribed by the municipality by resolution;

“property” in relation to a street trader, means any goods receptacle, vehicle or movable structure used or intended to be used in connection with the carrying on of his business as such;

“public place” means a place to which the public has access and included the Sea Shore and Promenade;

“public road” means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“roadway” means a roadway as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“sell” includes-

- (a) barter, exchange or hire out;
- (b) display, expose, offer or prepare for sale;
- (c) store with a view to sell; or
- (d) provide a service for reward;

and “sale” has a corresponding meaning;

“sidewalk” means a sidewalk as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);

“street trader” means a person who carries on the business of street trading;

“street trading” means the selling of any goods (including a living thing) or the supply of or offering to supply any service for reward, as a street peddler or hawker in a public road or public place but does not include the sale of newspapers only;

“the Act” means the Businesses Act, 1991 (Act No. 71 of 1991) and includes the regulations made thereunder;

“vehicle” includes-

- (a) a self-propelled vehicle;
- (b) a trailer;
- (c) a hand-drawn or propelled vehicle, and

“verge” means a verge as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996).

- (2) In these bylaws, unless the context otherwise indicates, any word or expression defined in the Act shall bear the meaning so given to it.
- (3) For the purpose of these bylaws a single act of offering for sale or of selling goods or services in or from public road or public place constitutes the carrying on of the business of a street trader.

- (4) For the purposes of these bylaws a reference to a person carrying on the business of street trader shall include employee of any such person.

2. Prohibitions

No person shall carry on the business of a street trader-

- (a) at a place or in an area declared under section 6A(2)(a) of the Act as a place or area in which they carrying on of street trading is prohibited;
- (b) on a verge, contiguous to –
- (i) a building belonging to, or occupied solely by , the State or the Municipality;
 - (ii) a church or other place of worship, or
 - (iii) a building declared to be a national monument under the National Monuments Act, 1969 (Act No. 28 of 1969);
- except to the extent that the carrying on of such business is permitted by a notice or sign erected or displayed by the Municipality and in compliance therewith;
- (c) on a verge contiguous to a building in which business is being carried on by any person who solely or mainly sells goods of the same or similar nature as goods being sold by the street trader concerned, without the consent of that person;
- (d) on the 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 thereto;
- (e) at a place where it substantially obstructs pedestrians in the use of a sidewalk or take up a position or deposit his property on a sidewalk so as to do so;
- (f) at a place where it causes an obstruction to vehicular traffic;
- (g) at a place where it causes an obstruction or in from of-
- (i) an entrance to or exit from a building;
 - (ii) a fire hydrant;
- (h) on a stand or in any area contemplated in section 6A(3)(b) of the Act if he is not in possession of proof that he has hired such stand or area from the Municipality or that it has otherwise been allocated to him;
- (i) in contravention of the terms and conditions of the lease or allocation to him of a stand or area contemplated in section 6A(3)(b) and (c) of the Act;
- (j) on any Municipality property unless written permission has been obtained;

- (k) contrary to a decision by the Municipality in terms of Section 2(a) of the Act to restrict trading to specific commodities in specified areas and/or contrary to any conditions contained in any permit for the right to trade in any area demarcated in terms of Section 6A, 39b)(i) and (ii) of the Act.

3. Restrictions

No person carrying on the business of a street trader shall-

- (a) if such business is carried on any public road or public place-
 - (i) sleep overnight at the place of such business, or
 - (ii) erect any structure (other than a device which operates in the same manner, and is shaped like, an umbrella) for the purpose of providing shelter;

without prior written approval of the Municipality.
- (b) carry on such business in such a manner as to –
 - (i) create a nuisance;
 - (ii) damage or deface the surface of any public road or public place or any public or private property, or
 - (iii) create a traffic hazard;
- (c) other than in a refuse receptacle approved or provided by the Municipality, accumulate, dump, store or deposit or cause or permit to be accumulated, dumped, stored or deposited any litter on any land or premises or on any public road or public place;
- (d) obstruct access to a service or to service works of the Municipality or of the State or any statutory body;
- (e) interfere with the ability of persons using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
- (f) obstruct access to a pedestrian arcade or mall;
- (g) carry on business or take up a position or place his property on a portion of a sidewalk or public place in contravention of a notice or sign erected or displayed by the Municipality for the purposes of these bylaws;
- (h) carry on such business in a place or area in contravention of any restriction imposed by Municipality resolution in terms of section 6A(2)(a) of the Act;
- (i) obstruct access to pedestrian crossings, parking, or loading bays or other facilities for vehicular or pedestrian traffic;
- (j) obstruct access to or the use of street furniture such as bus passenger benches or shelters and queuing lines, refuse disposal bins, and other facilities designed for the use of the general public; or

- (k) obscure any road traffic sign displayed in terms of the Road Traffic Act, 1989, and regulations made thereunder or any marking, notice or sign displayed or made in terms of these bylaws.

4. Cleanliness of place of business and protection of public health.

Every street trader shall-

- (a) unless prior written approval exempting him from the provisions of this paragraph has been given by the Municipality, daily remove from any public road or public place at the end of each trading day or at the conclusion of trading all goods, moveable structures, waste, packaging material, stock and equipment of whatsoever nature which are utilised in connection with such trading;
- (b) carry on his business in such a manner so as not to be a danger or threat to public health or public safety;
- (c) at the request of an authorised officer or employee of the Municipality move or remove anything so that the place of business may be cleaned;
- (d) keep the area or stand occupied by him for the purpose of his business as well as his property in a clean and sanitary condition and free of litter; or
- (e) ensure that his activities do not involve the cooking or preparation of food.

5. Trading in Parks and Gardens

No street trader shall carry on business in a garden or park to which the public has the right of access except with the prior written approval of an authorised official and in compliance with any conditions imposed by him when granting such consent.

6. Objections used for display of goods

A street trader shall ensure that any structure, container, surface or other object used by him for the preparation, display, storage or transportation of goods-

- (a) is maintained in a good state of repair and in a clean and sanitary condition; and
- (b) is not so placed or stacked so as to constitute a danger to any person or so as to be likely to injure any person.

7. Removal and Impoundment

- (1) For the purpose of this bylaw “goods” includes any receptacle vehicle or movable structure.

- (2) An authorised official may remove and impound any goods-
- (a) which he reasonably suspects are being used or are intended to be used or have been used in or in connection with the carrying on of any business of a street trader; and
 - (b) which he finds at a place where the carrying on of such business is restricted in terms of bylaw 3(h) or bylaw 5 or prohibited in terms of bylaw 2(a) to (j) and which in his opinion constitutes an infringement of such provision;

whether or not such goods are in the possession or under the control of any person at the time of such removal or impoundment.

- (3) Any authorised official acting in terms of sub-bylaw (2) shall-
- (a) except in the case of goods which have been left or abandoned, issue to the person carrying on the business of street trader a receipt of any goods so removed and impounded; and
 - (b) forthwith deliver any such goods to the authorised official.

8. Offences and Penalties

- (1) Any person who-
- (a) contravenes or fails to comply with any notice, sign or marking displayed or erected for the purpose of these bylaws;
 - (b) ignores, disregards or disobeys any notice, sign or marking displayed or erected for the purpose of these bylaws;
 - (c) contravenes or fails to comply with any approval or condition granted or imposed in terms of these bylaws;
 - (d) for the purpose of these bylaws makes a false statement knowing it to be false in a material particular or deliberately furnishes false or misleading information to an authorised official or officer; or
 - (e) threatens, resists, interferes with or obstructs an authorised official, officer or employee of the Municipality in the performance of his powers, duties or functions under these bylaws;
 - (f) contravenes any provision of these bylaws.

shall be guilty of an offence and upon conviction shall be liable to the fines determined by a Chief Magistrate of the Magistrate's Court with jurisdiction in the area in which the offence has been committed or imprisonment as determined by a competent court.

9. Presumptions

In any prosecution of a street trader for a contravention of these bylaws, the accused shall be deemed to know the provisions of these bylaws and to know that the offence with which he is charged is a contravention thereof.

10. Repeal of bylaws

All Municipal Bylaws, and amendments thereto, relating to Street Trading made by the local authorities of Nkwazi/Zinkwazi Beach Transitional Local Council, KwaDukuza/ Stanger Transitional Local Council and Dolphin Coast Transitional Local Council, disestablished in terms of Provincial Notice No. 345 of 2000 in terms of section 12 of the Local Government: Municipal Structures Act, 1998: Establishment of Municipalities 9DC 29, KZ 291, KZ 292, KZ 293, KZ 294) as published on 19 September 2000, are hereby repealed.