

LOCAL AUTHORITY NOTICE 207**QUEENSTOWN TRANSITIONAL LOCAL COUNCIL****BY-LAW FOR THE SUPERVISION AND CONTROL OF THE CARRYING ON OF
BUSINESS OF STREET VENDOR, PEDLAR AND HAWKER****PREAMBLE**

WHEREAS it is recognised that there is a need to create an environment in which the carrying on of the business of informal trading is permitted in public streets and public places subject to the rights of all citizens as contained in the constitution of the Republic of South Africa and the provisions of the Businesses Act, 1991 (Act 71 of 1991);

AND WHEREAS it is recognised that all active participants in the Eastern Cape economy are committed to creating conditions that will make street trading commercially viable and contribute to the economic activity and growth of the Eastern Cape economy;

AND WHEREAS local Government shall create an enabling environment for informal trading by the creation of an annual budget reflecting the estimates of revenue and expenditure relating specifically to the provisions of basic services and infrastructure;

AND WHEREAS there shall be a concomitant duty on the informal sector to participate fully in the economic growth of the Province and contribute to the tax base of the Province;

NOW THEREFORE this by-law is promulgated to facilitate the carrying on of that business and to provide for matters incidental thereto.

DEFINITIONS

1. In this by-law unless the context indicates otherwise, a word or an expression, contained herein shall have the meaning assigned thereto in the Business Act 1991 (Act 71 of 1991), and -

"litter" means any receptacle, container or other object or matter discarded or abandoned by a street trader or his or her customers;

"local authority" means the local authority of Queenstown and includes a committee or employee of the local authority exercising powers or performing duties or functions delegated by the local authority;

"nuisance" means any conduct which brings about or may bring about a state of affairs or condition which constitutes a source of danger to at any time been declared or rendered a public place by the local authority or another competent authority;

"officer" means -

- a) a traffic officer appointed under section 3 of the Road Traffic Act, 1989 (Act 29 of 1989);
- b) a member of the Force as defined in section 1 (1) of the Police Act, 1989 (Act 7 of 1958)
- c) a peace officer contemplated by section 334 of the Criminal Procedure Act, 1977 (Act 51 of 1977), or
- d) an Environmental Health Officer in service of the Council.

"sidewalk" means that portion of a verge intended for the exclusive use of pedestrians;

"street trader" means a person who carries on the business of a street vendor, pedlar or hawker and includes an employee of such a person and shall, for the purposes of this by-law, include such a person who trades in a public road or public place;

"street trading" includes the selling of goods or the supplying or offering to supply a service for reward as a street trader in a public road or public place but does not include the sale of newspapers only;

"the Act" means the Business Act, 1991 (Act 71 of 1991);

"verge" that portion of a road, street or thoroughfare which is not the roadway.

GENERAL CONDUCT

2. A person carrying on the business of street trader shall
- (a) not place his or her property on a public road or public place except for the purpose of commencing and conducting trade;
 - (b) ensure that his property does not on a public road or public place, cover an area which is greater than 2 m in length and 1,5 m in width.
 - (c) not obstruct access to a fire hydrant or any other designated facility or area demarcated solely for the use of emergency vehicles and services;
 - (d) not carry on the business of street trader on a verge contiguous to -
 - (i) a church or other place of worship, or
 - (ii) a building declared to be a national monument under the National Monuments Act, 1969 (Act 28 of 1969).
 - (e) not carry on the business of street trader 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;
 - (f) not carry on the business of street trader at a place where it substantially obstructs pedestrians in their use of a sidewalk;
 - (g) not carry on the business of street trader at a place where it causes an obstruction to vehicular traffic.
 - (h) not carry on the business of street trader at a place where it causes an obstruction in front of -
 - (i) an entrance to or exit from a building, or

- (ii) a fire hydrant;
- (i) not carry on the business of street trader at a stand or in an area contemplated in section 6A(3)(b) of the Act if he or she is not in possession of written proof of having hired that stand or area from the local authority or it having been allocated otherwise;
- (j) not carry on the business of street trader in contravention of the terms and conditions of the lease or allocation to him or her of a stand in terms of section 6A(3)(c) of the Act;
- (k) not carry on the business of street trader on any provincial road or on the verge within 50 metres of that provincial road with the exception of areas specifically developed by the local authority for the use of street traders;
- (l) not carry on the business of street trader at any parking area declared an essential parking area by the local authority; and
- (m) it obstructs the visibility of a display window in business premises, if the person carrying on business in the business premises concerned objects thereto:

GENERAL RESTRICTIONS

3. (i) A person carrying on the business of street trader shall not -
- (a) if the business is carried on in a public road or public place -
 - (i) sleep overnight at the place of the business, or
 - (ii) erect a structure for the purpose of providing shelter;

without the prior written approval of the local authority.
A person who feels aggrieved by a decision taken by the local authority acting in terms of this provision, shall have the right to appeal to the recognised Appeal Committee of the local authority within 30 days of written notice of that decision.
 - (b) carry on the business in a manner as to -
 - (i) damage or deface the surface of a public road or a public place or public or private property, or
 - (ii) create a traffic hazard;
 - (c) accumulate, dump, store or deposit or cause or permit to be accumulated dumped, stored or deposited litter on land or premises or on a public road or public place other than in a refuse receptacle approved or provided by the local authority;
 - (d) obstruct access to a local authority service or service works;
 - (e) obstruct access to a pedestrian arcade or mall;
 - (f) obstruct access to pedestrian crossings, parking or loading bays or other facilities for

vehicular or pedestrian traffic;

- (g) 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
- (h) obscure a road traffic sign displayed in terms of the Road Traffic Act, 1989 (Act 29 of 1989), and the regulations made thereunder or any marking, notice or sign displayed or made in terms of this by-law.
- (i) The Council may display signs, markings or other devices indicating restricted or prohibited areas.

CLEANLINESS AND PROTECTION OF PUBLIC HEALTH

4. (1) Every street trader shall -
- (a) carry on his or her business in a manner as not to be a danger or threat to public health or public safety;
 - (b) at the request of an employee of the local authority move his or her property in order to permit the cleaning of the surface of the area or of the site where he or she is trading;
 - (c) keep the stand or area occupied by him or her for the purpose of his or her business as well as his or her property in a clean and sanitary condition and free of litter, and
 - (d) if his or her activities involve the cooking or other preparation of food, take steps to ensure that no fat, oil or other substance drops or overflows onto the surface of a public road or public place or splashes against a building or other structure.
- (2) The local authority shall -
- (a) ensure that the sites on which the street traders trade are cleaned and sanitised on a regular basis;
 - (b) provide receptacles on the sites in order to facilitate the disposal of litter by the street traders, and
 - (c) ensure that the receptacles are emptied on a regular basis in order to facilitate the cleaning of trading sites,

TRADING IN PARKS AND GARDENS

5. No street trader shall carry on business in a garden or park to which the public has right of access except with the prior written approval of the local authority which approval shall not be unreasonably withheld and may be granted subject to certain conditions.

OBJECTS USED FOR DISPLAY OF GOODS

6. (1) A street trader shall ensure that any structure, container, surface or other object used by him or her or 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 as to constitute a danger to any person or as to be likely to injure any person.

REMOVAL AND IMPOUNDMENT

7. (1) If a person carrying on the business of street trader fails or refuses to comply with a written request, the content of which has been explained to him or her, to move or remove his or her property, or leaves that property unsupervised for a period of more than eight hours, an officer may remove and impound property -
- (a) which he or she reasonably suspects is being used or is intended to be used or has been used in or in connection with the carrying on of the business of street trader, and
 - (b) which he or she finds at a place where the carrying on of that business is restricted, or prohibited in terms of this by-law, and which in his or her opinion constitutes an infringement of this by-law.
- (2) An officer acting in terms of this section shall -
- (a) except in the case of goods which have been left or abandoned, immediately issue to the person carrying on the business of street trader a detailed receipt for property so removed and impounded, which receipt shall contain adequate information as to where the property will be impounded and the procedure for reclaiming that property, and
 - (b) immediately deliver that property to the local authority.
- (3) Property removed and impounded as contemplated in section A of the Act may, in the case of perishable property, be sold or destroyed by the local authority within a reasonable time after its impoundment, provided that the property shall subject to the provisions of subsection (4), at any time prior to its disposal, be returned to the owner at the request of and on proof of ownership by the owner to the local authority, and he shall, subject to the provisions of subsection (4) in the case of property other than perishable property, be returned to the owner at the request of and on proof of ownership by the owner to the local authority within a period of one month from the date of impoundment.
- (4) The local authority shall be entitled to keep the property until all reasonable expenses have been paid to it, failing which the property may be sold or, in the case of perishable goods, either be sold or destroyed by the local authority.
- (5) In the case of a sale of impounded property by the local authority, the proceeds of the sale less the reasonable expenses incurred by the local authority in connection with the removal, impoundment, or disposal of the property shall be paid to the person who was the owner of the property when it was impounded. If the owner fails to claim the proceeds within three months of the date on which the property was sold, the proceeds shall be forfeited to

the local Authority and shall be paid into a special fund created by the local authority dedicated to the development of the informal sector and matters ancillary thereto.

- (6) If the proceeds of sale of property contemplated in this section is not sufficient to defray the reasonable expenses incurred by the local authority in connection with the property, the owner of the property which has been removed and impounded or disposed of, as contemplated, shall be liable for all reasonable expenses incurred by the local authority in connection with the removal, impoundment or disposal.

APPEALS

8. (1) A person who feels himself or herself aggrieved by the decision of the local authority may appeal against the decision to an Appeal Committee in accordance with the provisions set out herein.
- (2) A person who finds himself or herself aggrieved by the decision of the local authority shall notify the local authority of his or her intention to an appeal against the decision in writing within 10 days of having received notification of the local authority's decision.

CONSTITUTION OF THE APPEAL COMMITTEE

9. (1) The Executive Council representatives of the informal traders and any other interested person, designate persons as members to the Appeal Committee.
- (2) The Appeal Committee shall consist of a maximum of five members with at least one member from the street trading sector.
- (3) The members of the Appeal Committee shall appoint two members to act as Chairperson and Deputy Chairperson respectively.
- (4) When the chairperson is unable to perform the function of a Chairman, the deputy chairperson shall perform the function of a chairperson.
- (5) If the chairperson is of the opinion that a particular person is able to assist the Appeal Committee, he or she may co-opt that person for that purpose.
- (6) A person so co-opted shall not be entitled to vote at a meeting of the Appeal Committee.
- (7) The chairperson shall notify the aggrieved person of the date, time and place of the meeting of the Appeal Committee at which his or her presence is required within 10 days of receipt of the notice of appeal.
- (8) The aggrieved person who has received notice in terms of subsection (7) shall personally appear at the meeting or appoint a legal representative or any other person to appear on his or her behalf.

PROCEDURE AT APPEAL MEETINGS

10. (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 Appeal Committee a document or other property which is in his or her possession or under his or her control, or
 - (c) be questioned by the Appeal Committee on the matter before .
- (4) The Appeal Committee shall review the decision of the local authority and make a finding, having regard to the following:
 - (a) whether the decision of the local authority was fair and equitable in the circumstances;
 - (b) how the decision will affect the aggrieved person's ability to trade, and
 - (c) whether alternative measures may be adopted to enable the aggrieved person to continue his or her business.
- (5) A decision of the Committee shall be taken by a majority of votes of the members present at the meeting and if there is an equality of votes, the chairman shall have a casting vote in addition to his or her deliberative vote.
- (6) The Appeal Committee, having considered the evidence presented, may -
 - (a) refuse the appeal;
 - (b) uphold the appeal, or
 - (c) take any other steps that it may think fit.
- (7) The Appeal Committee shall as soon as is practicable -
 - (a) notify the aggrieved person of its decision in writing, and
 - (b) furnish the aggrieved person with written reasons for the decision.

OFFENCES

11. (1) A person who -
 - (a) contravenes or fails to comply with a provision of this by-law;
 - (b) ignores, disregards or disobeys a notice, sign or marking displayed or erected for the purposes of this by-law;
 - (c) contravenes or fails to comply with an approval or a condition granted or imposed

in terms of this by-law;

- (d) fails to comply with a written request to move or remove his or her property;
- (e) deliberately furnishes false or misleading information to an officer or employee of the local authority, or
- (f) threatens, resists, interferes with or obstructs an officer or employee of the local authority in the exercise or performance of his or her powers, duties or functions under this by-law,

shall be guilty of an offence and liable on conviction to a fine not exceeding One Thousand Rand (R 1,000) or to imprisonment for a period not exceeding three (3) months.

REPEAL OF REGULATIONS

12. The Regulations relating to Hawkers and Pedlars published in the Provincial Gazette under Provincial Notice 404 dated 28 August 1992 are hereby repealed in so far as they apply to the municipal area of Queenstown.

SCHEDULE OF PRINCIPLES

In accordance with the provisions of the Businesses Act, 1991 (Act 71 of 1991), and the by-laws and regulations promulgated in terms thereof, the following principles shall apply:

1. That legislation shall provide a framework to allow street traders to operate as legitimate contributors to the economic activity and growth of the Province.
2. Street traders shall have the freedom to trade in an open economy and pursue a livelihood as contributors to the economy of the Province.
3. Street traders shall have equal access to market opportunities.
4. Street traders shall be treated as entrepreneurs engaged in formal economic activity; however, the historical background from which the sector has emerged and the specific logistical problems associated with the sector shall be borne in mind.
5. Street traders shall have the freedom to associate and constitute themselves into bodies and organisations of their choice, provided that they are formally constituted and have a recognised membership. These properly constituted bodies shall be recognised by government and other sectors.
6. Street traders shall contribute to the creation of a growing and expanding economy.
7. Street traders shall assist in the promotion of participation in the growth and development of the Eastern Cape economy with particular attention to the advancement of historically disadvantaged entrepreneurs and groups.
8. Street traders shall contribute to the creation of viable employment opportunities.

9. Street traders shall contribute to the creation of viable employment opportunities.
10. Street traders shall contribute to the protection of the environment and the proper planning and development of the economy and the Province.
11. Street traders shall operate within the legal framework and contribute to the tax base of the Province.
12. Street traders and local authorities shall accept the principle of negotiation and fairness in the resolution of conflict.
13. Street traders shall contribute to the promotion of a clean and healthy environment and the protection of public health and safety.