

Street Trading Bylaws

M.N. 97/95 SECTION J.6

STREET TRADING BYLAWS

1. Definitions

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

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

"authorized official" means an official of the Council 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:

"City" means the City of Durban;

"Council" means the City Council of the City and includes, in relation to a duty, function or power under these bylaws, a committee or official of the Council to whom it has delegated that duty, function or power;

"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;

"local authority service" means any system conducted by or on behalf of a local authority for the collection, conveyance, treatment or disposal of refuse, sewage or stormwater or for the generation, impounding, storage, purification or supply of water, gas or electricity;

"local authority service works" means all property or works of whatsoever nature necessary or desirable for or incidental to any local authority service;

"nuisance" bears the meaning given to it by the Ordinance

"Ordinance" means the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974);

"prescribed" means prescribed by the Council 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 public place as defined in section 1 of the Ordinance;

"public road" means a public road as defined in section 1 of the Road Traffic Act, 1989 (Act No. 29 of 1989);

"roadway" means a roadway as defined in section 1 of the Road Traffic Act, 1989;

"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 Road Traffic Act, 1989;

"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 supplying or offering to supply any service for reward, as a street vendor, 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 Road Traffic Act, 1989.

(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 from a public road or public place constitutes the carrying on of the business of a street trader.

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

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 the carrying on of street trading is prohibited;

(b) on the 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 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 Council 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 sell goods of the same or similar nature as goods being sold by the street trader concerned, without the consent of that person;

(d) 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 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 in front 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 Council 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.

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 as, and is shaped like, an umbrella) for the purpose of providing shelter;

without prior written approval of the Council;

(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 Council, 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 Council 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 Council for the purposes of these bylaws;

(h) carry on such business in a place or area in contravention of any restriction imposed by Council 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 markings, 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 Council, daily remove from any public road or public place at the end of each trading day or at the conclusion of trading all goods, movable structures, waste, packaging material, stock and equipment of whatsoever nature which are utilized in connection with such trading;

(b) carry on his business in such a manner as not to be a danger or threat to public health or public safety;

(c) at the request of an officer or an employee of the Council 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) if his 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 sidewalk or splashes against a building or other structure.

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 the Council's Director of Parks or other authorized 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.

Removal and impoundment

(1) For the purpose of this bylaw "goods" includes any receptacle, vehicle or movable structure.

(2) An officer may remove and impound any goods -

(a) which he reasonably suspects are being used or are intended to be used or have been used 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 (g) 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 officer 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 for any goods so removed and impounded; and

(b) forthwith deliver any such goods to the authorized official.

(4) Neither the Council nor a councillor, official, officer or employee of the Council shall be liable for any loss of or damage to any goods removed and impounded in terms of this section.

General offences and penalties

(1) Any person who -

(a) contravenes or fails to comply with any provision 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 imposes 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 authorized official or officer; or

(e) threatens, resists, interferes with or obstructs an authorized official, officer or employee of the Council in the performance of his powers, duties or functions under these bylaws;

shall be guilty of an offence and on conviction be liable to a fine or imprisonment for a period not exceeding three months.

(2) When an employee of a street trader performs any act or is guilty of any omission which constitutes an offence under these bylaws the employer shall be deemed to have performed the act or to be guilty of the omission himself and he shall be liable on conviction to the penalties mentioned in sub-bylaw (1) unless he proves to the satisfaction of the Court that -

(a) in performing the act or being guilty of the omission the employee was acting without his knowledge or permission;

(b) all reasonable steps were taken by him to prevent the act or omission in question; and

(c) it was not within the scope of the authority or the course of the employment of the employee to perform an act of the kind in question.

(3) The fact that an employer issued instructions forbidding any act or omission referred to in sub-bylaw (2) shall not of itself be accepted as sufficient proof that he took all steps referred to in paragraph (b) of that sub-bylaw.

(4) When an employer is by virtue of the provisions of sub-bylaw (2) liable for anything done or omitted by his employee, then that employee shall also be liable to prosecution for the offence.

9. Presumption

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.

P.N. 500/62 SECTION J.7

PAWNBROKERS' BYLAWS

Repealed by M.N. 297/90 dated 6 September 1990.